

**KAUA'I PLANNING COMMISSION
REGULAR MEETING
April 14, 2015**

The regular meeting of the Planning Commission of the County of Kaua'i was called to order by Vice Chair Mahoney at 9:46 a.m., at the Līhu'e Civic Center, Mo'ikeha Building, in meeting room 2A-2B. The following Commissioners were present:

Vice Chair Sean Mahoney
Ms. Amy Mendonca
Mr. Louis Abrams
Mr. Kimo Keawe

Absent and Excused:
Chair Angela Anderson
Mr. Wayne Katayama

The following staff members were present: Planning Department – Michael Dahilig, Leslie Takasaki, Kaaina Hull, Jody Galinato; Deputy County Attorney Ian Jung; Office of Boards and Commissions – Darcie Agaran

Prior to the start of the meeting, Council Administrative Assistant Eddie Topenio gave the Oath of Office to new Commission Member Kimo Keawe.

Discussion of the meeting, in effect, ensued:

CALL TO ORDER

Vice Chair Mahoney called the meeting to order at 9:46 a.m.

ROLL CALL

Planning Director Dahilig: You have four (4) members present, Mr. Chair.

APPOINTMENT OF SUBDIVISION COMMITTEE MEMBER

Mr. Dahilig: Mr. Chair, you're on the appointment of Subdivision Committee Member.

Chair Mahoney: At this time I'd like to appoint Amy Mendonca to the Subdivision Committee. Could I have a motion please?

Mr. Abrams: So moved.

Mr. Keawe: Second.

Chair Mahoney: All in favor? (Unanimous voice vote) Welcome back to the Subdivision Committee, thank you.

Ms. Mendonca: Thank you.

On the motion made by Commissioner Abrams and seconded by Commissioner Keawe to appoint Amy Mendonca to the Subdivision Committee, the motion carried by unanimous voice vote.

APPROVAL OF THE AGENDA

Mr. Dahilig: Mr. Chair, you're on Item D, which is the approval of the agenda. If I could recommend that the Commission after Item F handle the Subdivision Report, and after that handle the Consent Calendar, and then move into Agency Hearings and Public Comment on the rest of the matters pertaining to the Planning Commission agenda this morning, and then at the 11 o'clock hour if we can handle Item M and stop whatever Commission proceedings are going on to handle the Class IV Zoning Permit related to Kaua'i Springs remanded from the Hawai'i Supreme Court, and due to Council screening we need to handle that item at 11 o'clock because the County Attorney is coming down, so if I could suggest those changes to the agenda this morning, Mr. Chair.

Chair Mahoney: Thank you. Chair will entertain a motion.

Mr. Abrams: So moved.

Ms. Mendonca: Second.

Chair Mahoney: Moved and seconded. All in favor? (Unanimous voice vote) Motion carried.

On the motion made by Commissioner Abrams and seconded by Commissioner Mendonca to approve the agenda as amended, the motion carried by unanimous voice vote.

MINUTES of the meeting(s) of the Planning Commission

Regular Meeting of February 24, 2015

Regular Meeting of March 10, 2015

Mr. Dahilig: Thank you Mr. Chair. We are now on Item E, Minutes of the Planning Commission. We specifically have the minutes of the February 24, 2015 and the meeting of March 10, 2015 for the Commission's approval this morning.

Ms. Mendonca: So moved.

Mr. Abrams: Second.

Chair Mahoney: Moved and seconded. All in favor? (Unanimous voice vote) Motion carried.

On the motion made by Commissioner Mendonca and seconded by Commissioner Abrams to approve the minutes of February 24, 2015, and March 10, 2015, the motion carried by unanimous voice vote.

RECEIPT OF ITEMS FOR THE RECORD

Mr. Dahilig: Thank you Mr. Chair. We are now on Item F, Receipt of the Items for the Record. We have a number of written items that have been submitted to the Planning Commission for testimony this morning. I ask that those be received.

Chair Mahoney: Motion to receive. Chair will entertain a motion.

Ms. Mendonca: So moved.

Mr. Keawe: Second.

Chair Mahoney: Moved and seconded. Any discussion? Hearing none. All in favor? (Unanimous voice vote) Opposed? (None) Motion carried.

On the motion made by Commissioner Mendonca and seconded by Commissioner Keawe to receive the items for the record, the motion carried by unanimous voice vote.

COMMITTEE REPORTS

Subdivision

Mr. Dahilig: Thank you Mr. Chair. We are now on Item L, Committee Reports. This is the Subdivision Committee.

Mr. Abrams: The Subdivision Committee Report No. 14 met this morning and tentative subdivision action was approved for S-2015-11 Matsumoto; S-2015-12 Ōma'o Ranch Lands; S-2015-13 Alexander and Baldwin LLC/McBryde Sugar LLC/Kukui'ula Development Co., LLC; and S-2015-14 CIRI Land Development Corp. Final subdivision approval was given to S-2012-

01 Togioka Trust, and S-2015-04 Phillip Richmond/Fia Palmer-Richmond/Mark Gabbay/Andrea Gabbay.

Chair Mahoney: Thank you. Can I get a motion?

Mr. Abrams: Motion to approve.

Chair Mahoney: Second?

Mr. Keawe: Second.

Chair Mahoney: All in favor? (Unanimous voice vote) Motion carried. Thank you.

On the motion made by Commissioner Abrams and seconded by Commissioner Keawe to approve the April 14, 2015, subdivision committee report, the motion carried by unanimous voice vote.

CONSENT CALENDAR

Status Reports

2015 Annual Status Report for Special Management Area Use Permit SMA(U)-2006-04, Project Development Use Permit PDU-2006-6 and Class IV Zoning Permit Z-IV-2006-9, Tax Map Key 4-3-002: 015, 16 & 20 = Coconut Beach Development, LLC.

Mr. Dahilig: Thank you Mr. Chair. We are now on the Consent Calendar. You have one (1) item for consent this morning. This is the status report for 2015 for SMA Use Permit 2006-04; Project Development Use Permit PDU-2006-6 and Class IV Zoning Permit Z-IV-2006-9; Tax Map Key 4-3-002 parcel 15, 16, and 20. Coconut Beach Development, LLC is the applicant submitting this status report pursuant to the conditions of approval.

Director's Report(s) for Project(s) Scheduled for Agency Hearing on 04/28/15. (None)

Mr. Dahilig: We do not have any Director's Report scheduled for agency hearing on 04/28/15. Mr. Chair, that is all for the Consent Calendar this morning.

Chair Mahoney: Thank you. Is there any member that would like to take anything out of the Consent Calendar? Hearing none. Is there anybody from the public that would like to testify on this? Seeing none. Motion to approve?

Mr. Keawe: So moved.

Ms. Mendonca: Second.

Chair Mahoney: Any discussion? (None) All in favor? (Unanimous voice vote)
Motion carried.

On the motion made by Commissioner Keawe and seconded by Commissioner Mendonca to approve the consent calendar, the motion carried by unanimous voice vote.

HEARINGS AND PUBLIC COMMENT

Mr. Dahilig: Thank you Mr. Chair. We are now on Hearings and Public Comment. This public comment period is limited to three (3) minutes per testimony per person, but may be extended longer at the discretion of the Chair. If you elect to use your opportunity to testify on this agenda item at this juncture, you can do it now or when the item is called, so you have a choice of either testifying now or when the item is called later on in the agenda this morning.

Continued Agency Hearing (None)

Mr. Dahilig: With that Mr. Chair, we do not have any continued agency hearings.

New Agency Hearing

Class IV Zoning Permit Z-IV-2015-13, Use Permit U-2015-12, Special Permit SP-2015-3 to operate a resource recovery facility for green waste, construction & bulky materials, on a parcel situated along the mauka side of Kaumuali'i Highway in Kekaha, approx. 0.85 mile inland and 1 mile west of Kekaha Gardens Subdivision, further identified as Tax Map Key (4) 1-2-002: 008, and containing a land area of 12.34 acres = Shredco, LLC.

Mr. Dahilig: We do have one (1) new agency hearing. This is for Class IV Zoning Permit Z-IV-2015-13, Use Permit U-2015-12, and Special Permit SP-2015-3 to operate a resource recovery facility for green waste, construction & bulky materials, on a parcel situated along the mauka side of Kaumuali'i Highway in Kekaha, approximately 0.85 mile inland and 1 mile west of Kekaha Gardens Subdivision, further identified as Tax Map Key (4) 1-2-002, parcel 8, and containing a land area of 12.34 acres. The applicant is Shredco, LLC. The Director's Report was received on 03/24/15, and there's also a supplemental Director's Report on the matter. Mr. Chair, the Department would recommend opening agency hearing at this time.

Chair Mahoney: We will open a hearing.

Mr. Dahilig: Thank you, Mr. Chair. I do have three (3) individuals to testify on this particular item. I do want to read into the record though that we did receive testimony from James Nakatani, who is the head of the Agribusiness Development Corporation, as well as, Douglas Codiga, who is providing testimony on behalf of the Kekaha Agriculture Association, so if those can be included in the record for agency hearing this morning. Mr. Codiga is the first to testify, followed by Joe Munechika, followed by James Nakatani.

Chair Mahoney: Could you please state your name for the record?

Doug Codiga: Yes. Good Morning Chair and Commissioners, Doug Codiga, outside counsel for the Kekaha Agriculture Association, and with me is Joe Munechika, President of the Board of Directors of the Kekaha Agriculture Association. We're happy to have this opportunity to provide testimony on this matter. Written testimony has been submitted. We can rest on the testimony and take questions, or I can read it into the record at the Commission's pleasure. If it would be helpful to go quickly through it, through the written testimony.

Chair Mahoney: Briefly, if you could.

Mr. Codiga: Essentially, we have serious concerns about the proposal. As you know, the KAA's an agricultural co-operative established for the purpose of promoting agriculture and aquaculture out in Kekaha. Its members are engaged in those activities.

Shredco seeks these permits to operate a waste processing facility. The Shredco parcel surrounded by lands that are licensed to the KAA members for agriculture and aquaculture use, so as is reflected I think in the record, granting these permits would allow Shredco to grind and shred bulky materials including couches, sofas, mattresses, box springs, stuffed chairs, tables, dressers, vanities, large entertainment centers, woods, metals, glass, salvaged building components, and so forth. This is all from the Shredco application itself. It would also allow them to grind and shred concrete and asphalt debris from demolition projects. These materials would be stockpiled on site, so the members of the co-operative just have concerns about health and safety around this, and whether it's a compatible use with the surrounding agricultural uses. They believe that it is really not compatible with these uses. It's not an agricultural use and they do not support it for those reasons.

There's also concerns really about traffic and access. There's the old government road, not in the best condition that would need to be maintained by the Kekaha Ag Association, which has concerns about ensuring that maintenance is done properly based on increased traffic. There's also concerns about access to areas that should not be accessed, or to limiting control on access.

So for all of these reasons, the members of the co-op respectfully request the Commission to not grant these permits at this time. We do have a suggestion, which is that it may be appropriate for the Commissioners to actually have a quick site visit to see the condition of the road and sort of the access issues to have a feeling for what the concerns of the members are. We're happy to respond to any questions that you may have.

Chair Mahoney: Thank you. Thank you for your testimony. Any questions?

Mr. Keawe: So your main concern is that it is not consistent with the surrounding area?

Mr. Codiga: Yes.

Mr. Keawe: And the uses for the surrounding area?

Mr. Codiga: That's correct. I should distinguish it as well, there's a green waste use. Shredco has a parcel out in the same general area and they're doing green waste, and that's fine. The concern is the bulky materials, the other items that I mentioned that would be stockpiled, shredded, and processed on the site. And then the related concern really is access and use of the government road, the old government road.

Mr. Keawe: And you would be responsible to maintain that road, should this be granted?

Mr. Codiga: Yeah, the Kekaha Ag Association does have an agreement with the State to maintain the agricultural infrastructure, which does include the roadways. So we would have to ensure that that was taken care of. So that's one of the main concerns. It's unclear, as well, whether the condition of the road is consistent with what the County would normally expect for a road that's used in that manner. Right now it's just used with agricultural equipment, those kinds of things, but this would be heavy trucks and single passenger vehicles, and so forth; consistent with some sort of a business operation and that road really hasn't been used for that.

Joe Munechika: My name is Joe Munechika. We've been maintaining the road for years now, and we've had tremendous problems with the people breaking down the gates, trying to access it. If the operation continues on an eight (8) hour, five (5) days a week process, the gate will be opened, and people will have access to enter the property and using the other entry points to do...I don't know, basically hunting. I kind of lost track of what I was going to say but... The way we operate now, is when one (1) of our users or farmers, goes into the property, they'll shut the gate after they enter. As they leave, they'll open the gate and return, but the gate is always secured. If we have an operations, such as what is being proposed, the gate will remain open eight (8) hours a day and that would give access to anybody else that wants to enter the property. We've had tremendous problems; people break our locks, break our gates.

And because of the wear and tear on the roads, we as an association have been paying this for many years now and it amounts to thousands of dollars because you have these old railroad track bridges, and those things were built way back in the plantation days. They're really deteriorated now. We've been putting...I wish I had the figures to tell you how much we've been spending on maintaining the roads itself, but it's a huge amount; I can tell you that, it's a huge amount. We've been doing this for the last fourteen (14), fifteen (15) years that I know of.

Chair Mahoney: Thank you. Any other questions? (None) Thank you for your testimony.

Mr. Dahilig: James Nakatani.

Chair Mahoney: Could you state your name for the record please?

James Nakatani: Hi, good morning Vice Chair Mahoney. My name is Jimmy Nakatani, I am the Executive Director of the Agribusiness Development Corporation, ADC. We are the landowners around this parcel. I just want to add that Shredco was on one of the parcels. I think they're still there. They were shredding green waste, which we didn't have an issue with. I think what's...then they made the request to bring in...start shredding materials from furniture,

etc. I think the biggest concern is that they were taking these items that came from the landfill to the property to be shredded, and that's what gave us kind of a concern of what kind of materials are coming in from the outside. The other issue is that bringing materials...construction materials to be ground up. We don't know exactly what it consists of, so what happens if...in the case that this operation stockpiles this material and someday they cease to exist, what happens to that material and stockpiling items that are left on the land. I mean, who's responsible for that. The other issue's who's monitoring that because we spent a lot of money just cleaning up that area, contaminants and everything. We have those concerns for you to consider. Thank you.

Chair Mahoney: Thank you. Any questions? (None) Thank you for your testimony.

Mr. Dahilig: Mr. Chair, that's all I have signed up to testify on this particular item. I would suggest the Commission make a final call for anybody that would like to testify on this item.

Chair Mahoney: Is there any other members of the public that would like to testify on this agenda item? Hearing none.

Mr. Dahilig: Mr. Chair, it would be the Department's recommendation, given the subject matter of the testimony provided by the gentlemen that spoke earlier, that the Commission actually defer closure of this agency hearing to the next meeting.

Chair Mahoney: Chair will entertain a motion.

Ms. Mendonca: I so move to that.

Mr. Keawe: I second.

Chair Mahoney: Moved and seconded to defer. Any discussion? Louie.

Mr. Abrams: I was kind of curious to hearing the applicant's side before we defer.

Mr. Dahilig: Yeah, when we hit the item on New Business, they can do the presentation and vet it out, but I think even the subject matter that was provided pertaining to some of the issues raised, the Department will have to go back and actually try to further vet some of these items.

Mr. Abrams: Okay. I don't have any problem with deferring.

Chair Mahoney: Okay. It's been moved and seconded. All in favor? (Unanimous voice vote) Opposed? (None) Motion carried.

On the motion made by Commissioner Mendonca and seconded by Commissioner Keawe to defer the closure of this agency hearing to the next meeting, the motion carried by unanimous voice vote.

Continued Public Hearing

Zoning Amendment ZA-2015-4 : A bill for an ordinance amending Chapter 8, Kaua'i County Code 1987, as amended, to establish a process to permit Homestays in the Commercial Districts, Resort Zoning Districts and Residential Zoning Districts = County of Kaua'i, Department of Planning.

Mr. Dahilig: The applicant is our department, but we do have a supplemental Director's report pertaining to this matter as well as written testimony that was submitted by the agenda posting deadline from William and Catherine Covern, Sheila Lee, Vel and Valli Alahan, Claudia Herfurt, Darryl and Julie Chong, and Jennifer Schmidt. We also received this morning, testimony from Mark Beeksma, John Hoff, Ryan Hoff, Lorna Hoff, Sam and Sheila Lee, Karen Diamond, Huber and Lois Graham, Bruce and Cynthia Fehring, Julie Souza, William and Catherine Covern, Susan Gailey, Sam and Sheila Lee (again), Margaret Minor, and an anonymous, unsigned testimony, and a testimony from Lisa Green, Mike Harismendy, Arnold and Jane Albrecht, Jennie and Art Cernosia. That's all the written testimony I have, Mr. Chair that should be included in the record as far as the continued public hearing for this matter. I do have eighteen (18) individuals that have signed up to testify this morning Mr. Chair. We'll start with Lisa Brine, followed by Sam Lee, followed by Darryl Chong. Lisa Brine.

Lisa Brine: My name is Lisa Brine and I will be reading an abbreviated testimony that I've just submitted to all of you. I'm here today because I believe it's crucial that the new zoning amendment to include language to allow homestays on ag land. My husband was just a young man when he cleared, graded, irrigated, and planted our Kīlauea farm with over sixty (60) fruit trees. Over the years we've created a thriving landscape nursery. We have been continually dedicated to ag since 1983, file Schedule F's, and have fulfilled our commitment to use our property for the highest and best use of the land. We have a legally permitted guest house on our farm. Its footprint takes up less than 1% of our land. In 2002, we began welcoming visitors to our farm. We run our homestay entirely by ourselves. We greet our guests and provide fresh fruit picked from our trees. We educate them about composting, recycling, and organic gardening. They enjoy nursery and farm tours. Should they have any concerns, they know where to find us because we are right there, working and living on our farm. The hideaway has been a welcome stable addition to our fluctuating farm and nursery income. I would estimate that my homestay business has paid over \$75,000 in taxes over the years. By not permitting homestays on ag lands, the county will be cutting itself off of much needed revenue. Off island friends can rent a car at the airport, and stay in my guest house anytime they like. I honestly can't see how allowing paying guests to do the same lessens the quality of life in my neighborhood in any way. I recently reread our guest book entries. The outpouring of gratitude overwhelmed me and sharing our farm, we have given our guests an authentic experience that no resort for any amount of money could duplicate. When Planning Inspectors arrived unannounced late last year, I greeted them with aloha instead of turning them away and telling them that I wanted to see the proper paperwork, I walked them through our nursery and down to our guest house. Bambi shared that the homestay category of accommodation was finally going to be addressed. I told him I welcomed the opportunity to come in to compliance. I was hopeful. After all, the 2011 TVR land regulating single family dwellings on ag land had given off island

investors the ability to rent their properties outside of the VDA. Surely, the County would want to extend the same opportunity to those of us who call Kaua'i home, contributing to our communities and working the land. I will personally, to Mr. Dahilig, stating that I was willing to do whatever it took to have an avenue to be a legally permitted business. What that has meant so far, is shutting down my business, returning thousands of dollars in deposits, and hiring legal representation. Yes, it has been a financial hardship. But what comes out of all of this is a thoughtful, reasonable, and well-conceived regulation to meet the needs of the twenty-first (21st) century traveler who is looking for an alternative to conventional accommodation then it will be a win-win for the County of Kaua'i, island business, homestay operators, and visitors alike. Thank you.

Chair Mahoney: Thank you for your testimony.

Mr. Dahilig: Sam Lee, followed by Darryl Chong, followed by Julie Chong

Sam Lee: Morning, Mr. Chairman and Commissioners. I am Sam Lee, and I'm speaking for myself and my wife, Sheila. We are residents of Po'ipū. We're here to provide conditional support for the ordinance as is currently written. Assuming that there are no major changes affecting the substance, we feel cautiously optimistic that this version of the ordinance could be an acceptable middle ground between our original position of no further visitor rentals of any kind, including homestays, and the residential district. The reality that homestays do exist, and on a limited basis, may be accommodated within some residential areas through County managed rules and numerical limits. In its final form, we hope the ordinance contains three (3) elements in order to get residents supports. First, the residents will be informed when an application is filed and play in active role in its review. As we understand it, these prerogatives will be provided through the use permit process. For clarity sake, we would ask that the description of that process be included in the ordinance. Second, the County impose and enforce a reasonable limit on the number of permits to be issued. The derivation of that number should be based on a demonstrated need, which we believe can be established rather than just issuing permits to whomever comes in to ask for one. Third, put back into the ordinance deleted sections of the original ordinance that deal with development standards and permit renewals. In our view, the development standards section is particularly significant, as it establishes the clear cut need for off-street parking and for septic, for waste disposal. The ordinance should not be silent on those matters. As I wrap my testimony up, I want to say that we have not deviated from our belief that non-permitted activity, rental activity, should continue in the residential areas. However, by way of our testimony today, we feel there is room for compromise. Thank you.

Chair Mahoney: Thank you Mr. Lee.

Mr. Dahilig: Darryl Chong, followed by Julie Chong, followed by Alexis Boilini.

Darryl Chong: Darryl and Julie Chong. Aloha Planning Commissioners and members of the community. We are Darryl and Julie Chong, and have a homestay in Lāwa'i where we live and rent out one (1) bedroom since March 2007 while paying our GE and TAT taxes on all rental income. We have a homeowner's exemption that have lived on property since 1994. We also submitted written testimony last week and wanted to make sure all the Commissioners received a

copy of that email. We were already in operation before the 2008 TVR Bill was passed and understood from its wording that the County would extract clearer standards and permit processes for regulation of these homestay alternative visitor accommodations, structures and operations of residential agriculture, open and resort districts, and the bill as it read did not apply to bed & breakfast homestay units, and these accommodations would be handled at a later time. It also mentioned that the homestays were currently regulated through the use permit process. We understood that there was a use permit process, but that use permit process specific to this new and unique homestay accommodations use was going to be developed. Today, we are reviewing a proposed bill to amend the ordinance to establish and clarify the permitting process for homestays, which again makes reference to an incomplete procedure that is still being refined. In simpler terms, we took it to mean, you need a use permit for your homestay, but we don't have the use permit process for your homestay yet, so you have to wait and apply. We hope that you can see that we're operating with this understanding. We thought that we were in compliance by waiting for this use permit process to be completed, so we could apply for it. Here's the point, it is not our intention or understanding that our operations would be considered illegal, and so we must admit our confusion and wrongdoing. While this situation has caused considerable financial strain on our household, we do welcome regulation and appreciate the opportunity to apply for the use permit in these special conditions and are looking forward for the Planning Department, Planning Commission, and the County Council to provide a process that will be clear, defined, and reasonable, allowing owners to be fully compliant in the laws of this County and to resume their businesses with confidence as soon as possible. Thank you.

Chair Mahoney: Thank you for your testimony.

Julie Chong: Hello, members of the Commission. Julie Chong. I would like to reinforce the words of my husband, that we were under the impression that legislation would be developed that would provide guidelines that would outline parameters for use permit, specific to homestays and bed & breakfast operations. This is a new territory that calls for new legislation and an updated process. I think we can all agree that clear definitions and guidelines for complete process would provide relief for those homestay businesses that have been shut down, minimize the workload on Planning Department officials, and provide community input and give all the opportunity to equally apply for a specified use permit for homestays. In our written testimony, we did say, if we could offer a suggestion for temporary solution; one that would allow owners of these alternative homestay operations to come forward and submit the necessary documents that we know are required for use permit application, scaled house plans, plat site plans, elevation pictures, project description, proof of paid GE and TAT taxes and so forth, and any of the other documents that each owner should already have. Let each party submit these documents for review and approval by the Planning Department, and possibly give authority to Planning Department officials to grant each owner a partial or temporary use permit. Once the temporary use permit has been issued, owners of these alternative homestays may be allowed at that time to confidently resume their businesses as before, while they wait for a permit process to be completed. After a permitting process has been developed and amended by members of the County Council to the point of its final stages, then at that time owners of these alternative homestays can be notified to come in and apply for the final stages of an application to be granted a complete use permit that will be reviewed and approved by members of the Planning Commission. Thank you.

Chair Mahoney: Thank you for your testimony.

Mr. Dahilig: Alexis Boilini, followed by J. Chun, followed by Claudia Herfurt.

Alexis Boilini: Hello, my name is Alexis Boilini, and I'm the innkeeper and owner of Marjorie's Kaua'i Inn. Marjorie's Kaua'i Inn was designed to specifically function as a bed & breakfast twenty-three (23) years ago on a piece of steep property that everyone said couldn't be built on. Well Marjorie did build on it, and she even wrote a book about it. Marjorie's hugs the cliffside by itself with a straight on view of the Lāwa'i Valley, the Valley of Compassion. For over seven hundred (700) years, Hawaiians have been pilgrimaging here. Every morning we serve a full island breakfast to travelers from all over the world, while they sit and enjoy each other's company, and share the magic that the valley delivers. One can get a hundred views of the water from a hotel anywhere in the world, but Marjorie's Kaua'i Inn is the only place you can get this view of the panorama of the Lāwa'i Valley, and almost feel like you've lived here your whole life. We're located on ag land and nine (9) out of ten (10) of my guests will not stay at a hotel while on Kaua'i. If they don't have a place like mine to come to, they go to another island or other vacation destinations. We've never had a complaint and our only neighbors love seeing our grounds and the fruit trees from his place that feed our guests. I find it very telling that about twenty (20) years ago the original owner of my place stood in front of the Council twice, as the head of a group of bed & breakfast owners trying to plea a case for processing and permitting bed & breakfasts. Among the obvious, permitting would qualify them all to join under an umbrella of a large National organization of bed & breakfast owners. Knowing the high standards of these National organizations, brings with it referrals world-wide to our island. Well back then the permitting didn't happen, but they pretty much grandfathered those bed & breakfasts in for all these years, unless there was a neighborhood complaint. We continue to welcome that unique group of travelers that seek out a private place away from the timeshares and the touristy hotels. My husband and I purchased Marjorie's Kaua'i Inn with the proceeds from a quite large formal bed & breakfast in Asheville, North Carolina. We purchased it in 2005, and just about then there was a study being done that was under the direction of the Planning Department. It was commissioned in 2001 at the cost of \$190,000, and was completed in five (5) years in 2005. This is it, and it's an amazing study. I commend the Planning Department for ordering it. It was intended to be a guide for future amendments to land regulations. The report included a discussion of regulatory framework of TVRs and B&Bs. The review also gave pertinent data available for the report and analysis of the data, and the appropriate (inaudible) regulations contain in zoning ordinances. The lack of appropriate definitions in CZO that create many of the regulatory problems associated with bed & breakfasts. The term "bed & breakfasts" can be used to describe a wide variety of accommodations. When crafting a definition, it's important to define the term precisely in the zoning code. It did say that in 2005, there were only eight (8) bed & breakfasts permitted and I hear today that there are only eight (8) bed & breakfasts permits, so it seems to me that there haven't been any permits approved since 2005. Anyway, I just wanted to wrap up by saying, I understand that the Council went through the TVR issues three (3) times and obviously there are still challenges. I would love, and I'm sure all of these people would just love, if you guys got it right the first time around. We're willing to help you and there's people here that have had their businesses for twenty (20), twenty-five (25) years, successfully with no complaints. A sudden shutdown of our

bed & breakfasts would, of course, have far reach an economic impact...segment of the tourist industry and the dollars it brings to the island. My inn is responsible for \$33,000 a month being sent into the local economy; each couple spending an average of \$400 a day while they're around the island. In only the last ten (10) years, we sold over 2,000 helicopter rides, zip lines, catamaran tours, massage; we have a gardener, housekeeper, maintenance workers that have worked part-time for us for twelve (12) to twenty (20) years. J.R. planted every plant on that property that feeds our guests. They will all lose their jobs. We were directed to shut down because we checked a wrong box. I just want to say that there was not another box. There wasn't a box that said "B&Bs" on those tax records that pulled us all in today, and I just want to say that I know this whole group is willing to help you in any way we can. And I thank you very much.

Chair Mahoney: Thank you for your testimony.

Mr. Dahilig: J. Chun, followed by Claudia Herfurt, followed by Sheila Checkley.

Jonathan Chun: Good Morning, members of the Commission, Jonathan Chun. I'm here in different capacities. Some of these members are clients of mine who have been forced to file a use permit application, some are not, but I want to make comments on the ordinance.

One is I believe the proposed ordinance violates, or is inconsistent, with HRS Chapter 205. HRS Chapter 205 was amended in 2012 in Act 3-2-9 to expressly authorize ag tourism activities on ag land, and yet this ordinance ignores that. The Statute in 2012 required the Counties to adopt an ordinance recognizing ag tourism, and to regulate them. Again, this ordinance ignores that.

Also, the general plan required the County to adopt ordinance, as Ms. Boilini said, to regulate and to address the issues of bed & breakfasts, especially in ag land. Again, the county ignored that.

In 2007, the County Council had before it, and I think Commissioner Abrams is well aware because he was a member of the Ad Hoc Committee and the Ad Hoc Committee in 2005, as Ms. Boilini stated, had a proposed ordinance that said, that allowed all existing bed & breakfasts, including those on ag lands, to continue to operate as long as they're registered. That was the original ordinance that the Department came out with in 2005. That was the original ordinance that the Commission, in 2005, approved, but that was the ordinance that was changed by the County Council. And again, we're back here again ten (10) years later, arguing the same issues after it was studied and recommended that they're allowed to continue. We're in the same situation where, you know, government has a study done, goes through the process, and then ignores it. And this (inaudible), we have it over here, and there's no even, again, attempt to address what happened before, and why it's being followed, or not being followed.

Especially in regards to 2012, the State specifically said that ag tourism activity is a State, ag land is allowable. You might hear from your County Attorney saying, well that only applied to Maui, but when you look very carefully, that ordinance applied to all Counties that have three (3) islands. Kaua'i has three (3) islands, if you look at the Statute, Kaua'i has three (3) islands. As identified in the State Statute, those islands are Ni'ihau, Ka'ula, and Kaua'i, and they are

specifically identified. You cannot avoid the fact that Kaua'i has three (3) islands, and because of that you cannot avoid the fact that you are required to do an ordinance to address ag tourism on ag land. This does not do it. Again, I might sound frustrated, and I am, not because the Department hasn't done any hard work, and they have, they're struggling with it, but again I believe the County should start from where it ended last, and that was in 2005.

The last thing I want to make, I believe on the legal side, I think there's a problem with the ordinance in terms of restricting it only to individuals. I believe that focus is on ownership, as opposed to use, and ownership as standard land use law, ownership is not an issue and should not be addressed in land use issues, and to do that is ultra vires.

I'd be happy to work with the Department to correct some of the problems and issues. Thank you.

Chair Mahoney: Thank you, Mr. Chun.

Mr. Dahilig: Claudia Herfurt, followed by Sheila Checkley, followed by Nicki Pignoli.

Claudia Herfurt: Aloha Commissioners and community members. My name is Claudia Herfurt, and I have lived on the island since 1979, thirty-six (36) years. I've raised my children and my grandchildren on this island. I have operated a homestay in my home. I have a home exemption since 1987 in Hanalei, and since 2001 above Kalihiwai Bay where I moved to in that same year. All along I've paid all my GE and TA taxes, and I have never had a complaint from my neighbors. My property is three (3) acres and often partying from local neighbors seems to be more audible than whatever my two (2) guests, who I accommodate above a garage, do. It's a very peaceful, very small business.

My land is zoned agricultural, but it's on a hillside and very unusable for extensive agriculture. When the State raised my taxes for the year '14 and '15 to over \$20,000, which meant tripling the amount. With my awareness what the County was planning with accommodations in homes, I shut down my business in September 30 of last year. I cancelled all my tax forms, the GE and TA, and all my ads, and I have not had any guests for six (6) months, which means I haven't had any income. It felt really terrible to turn existing reservations away. So it's been a hardship and not only a lack of income, but there are additional expenses going to attorneys. I also made an attempt to be more in compliance on my ag land, and I've planted a small orchard on a small part of the hillside.

I would've gladly and immediately applied for a permit because I like to be legal and pay my taxes, but there was no venue for me to do this. I received the letter to cease and desist in February, and as I've told you, I already was in compliance in September 30. I know from general experience that homestays on ag lands are much less intrusive than in a residential area.

Again, I have very happy guests. The guests provide me a great income and wonderful relations, and I try to provide the very best in Hawaiian experience that I possibly can. I get guests from all over the world, but not for the last six (6) months. Thank you very much.

Chair Mahoney: Thank you for your testimony.

Mr. Dahilig: Sheila Checkley, followed by Nicki Pignoli, followed by Mark Beeksma.

Sheila Checkley: Good Morning Commissioners. My name is Sheila Checkley. I am more of an observer, but I have been touched by much of the testimony. I am a CPA and by a quick calculation based on the number of people in this room, if they were to represent 15% of all of the homestay operators, the occupancy tax could easily generate \$3 million a year to the State. I don't know what the ratio is between the State and the County, but that is merely occupancy tax. It doesn't include the income taxes generated or all of the other revenues. So this is merely a reminder, this can be a significant source of revenue.

Chair Mahoney: Thank you.

Mr. Dahilig: Nicki Pignoli, followed by Mark Beeksma, followed by Jeff Miller.

Nicki Pignoli: Good Morning Commissioners. My name is Nicki Pignoli, and I'm a full time resident of Kīlauea. I bought my home there in the year 2000, and at that point in time my home was operated as a B&B, and the owners before that owner operated a B&B. So I have been a B&B owner operator for the past fourteen (14) years, have my TAT taxes and GE taxes paid in full, and was waiting for the use permit process to begin so that I could file the appropriate use permit.

What I want to speak to this morning and not reiterate what some of my other fellow B&B owners have talked about, is the inequality of this particular piece of legislation regarding the requirements for homestay, or the legislation regarding them, versus TVRs. It seems like TVRs were grandfathered in large numbers, and B&Bs are not being given that consideration. Off-island property owners are given more consideration than full-time residents who live here, and who have been trying to abide by a law and legislation, and rules that haven't yet been in place.

Also, this particular bill as proposed shows no division between major and minor homestay operations, so some of us may be operating one (1) room out of a four (4) bedroom home, which is my case, in a residential area. While others may be operating four (4) bedrooms out of five (5), and granted there should be consideration for both of these issues; one may have more impact on the community than others.

I'd just like to add, I've got full support of my neighborhood, my immediate property owners, as well as, Kīlauea Neighborhood Association for continuing my operation.

The next thing is the proposal is written, says that county planning is only going to permit ten (10) permits a year to be issued. Now, when I met with county planning two (2) months ago, they told me I was one of the lucky few who got the early cease and desist notice, and they had some three hundred twenty (320) plus people that were getting notices, and they could only handle thirty (30) a week, so it was going to take that period of time. So three hundred twenty (320) permits over ten (10) per year, means that in thirty-two (32) years we'll have all of our businesses permitted. In the meantime, it's going to be a tough wait.

And lastly, there seems to be a lot of confusion now based on information from Planning who has sent cease and desist notices to some of us, not to others as yet and the Mayor's Office which has issued a statement which says that we need a moratorium on shutting down, and we need to wait and see, and get the legislation in place. And then another statement by county planning which says no, we're in violation and we need to cease and desist. In the meantime, we've been hit with thirty (30) times an increase in our property taxes and no visible means of the income now pay the tax increase. So, I'm filing my petition and I thank you for your listening today.

Chair Mahoney: Thank you for your testimony.

Mr. Dahilig: Mark Beeksma, followed by Jeff Miller, followed by Erik Paul.

Mark Beeksma: Mark Beeksma. Thank you very much for letting me speak. I live near Kōloa with my wife, Diane, who was a Melchor, and we have five (5) children who are fourth (4th) generation Hawaiians. I'm self-employed as a free-range egg farmer and a stock trader. A few years ago with the economic crash, I lost my primary income source. We started renting out one (1) extra bedroom to vacationers to keep us from losing our home, which we need for us and our five (5) children.

We paid our excise taxes. The last four (4) years we paid about \$25,000 in taxes, in excise and property taxes, and that of course doesn't even count the income taxes. It was mentioned before if there were three hundred (300) others like that, that would be \$7.5 million over the same period of revenue, so it's a lot of help to the County and the State.

We have never had any complaints from any of our neighbors. In fact, in the four (4) years that we've operated, we've had about a hundred fifty (150) guests. We've never had one (1) noisy or unpleasant guest. So I think it's all different when you're standing in somebody's home. I've never seen anybody be unpleasant or noisy. There's never been a party. They're just our guests, and normally, of course you know who it is, these are older couples on mainland time, and they go to bed early, normally.

Our lot is 25,000 square feet, approximately. There's plenty of room to park on the property. We are in a spacious area where we're not crowded at all. Our guests write adoring reviews on the website we use. They rave about what a wonderful time they've had with us. We have never had anyone write that they regretted staying with us. Many say that they do not want to stay in a hotel where they feel stacked on top of each other. They feel safer with us, and we work to keep them safe by warning them about ocean conditions, etc. Having guests in your room is an ancient custom that is much more personal and socially rewarding than a large hotel. Staying with someone under their roof is a rich experience when they leave, there are hugs all around.

I read the TVR regulations which the County Council members specifically said do not apply to homestays. So I, like the others, have been waiting to see regulations that would apply to homestays. I would like to humbly make the following suggestions and requests. One, and I apologize, I haven't read all the proposed documents, so I apologize for that, but I think there should be a clear distinction between homestays and B&Bs. They should be based on size, and

the reason is it comes into the taxes. In our situation, where we're renting one (1) bedroom out of a large four (4) bedroom house, if the whole house is now tripled in the property taxes, I figured out that all the work we're doing to take care of our guests, of the extra income that we're bringing in, 75% of that extra income is going out back to the governments. At that point, when I've looked at that recently, basically we've decided to stop. It's hard enough to raise a family, support a family on Kaua'i, without having 75% of your money go back to the government that you're earning through your labor. So at this point, we're not doing it, but I suggest as part of the distinction that the homestays, because it's a smaller operation with just one (1) guest, that those be in a lower tax bracket on property taxes, lower than the B&Bs. Also, I would request that there would be a grandfather for those who've paid their taxes and have never had a complaint. Thank you very much.

Chair Mahoney: Thank you for your testimony.

Mr. Dahilig: Jeff Miller, followed by Erik Paul, followed by Lorna and John Hoff.

Jeff Miller: Good Morning. My name's Jeff Miller. I live next door to a B&B that has become a major business. It's not advertised as a sanctuary, they sell products, they do massage, and they do a lot of things. It's not a B&B, so I strongly recommend, I'm in favor of the ordinance.

I would like it to be specific as to activities that are allowed, not list activities that aren't allowed because all I hear is, well it doesn't say I can't do this. So it should be specific to what's allowed.

I also had an experience. My wife and I were woken up in the middle of the night last month when a man who walked into our house, thinking we were the B&B because there's no signage on the B&B, because they're illegal and they don't want you guys to know they're there. Walked into my house with a flashlight, a dark house, and woke us up at 11:30 at night. That's an experience we will never forget. So I would hope that you would have a sign ordinance for these B&Bs that they be properly identified. Neighbors are affected by them.

I think they're great, I like staying in B&Bs, and I'm all in favor of your ordinance going through and everybody being given a chance to have a licensed B&B. I would like the neighbors to have a say in it. I would like it when they're sold that the new owners not automatically have a business, but they go through a fully new process, that it not go with the land, that it go with the owner, and it has to be renewed on a regular basis. The B&B next to me started out as two (2) bedrooms, it's now six (6); they've been adding on.

I deal with seminars, I deal with all kinds of problems, and I have complained to the neighbors over the last six (6) or seven (7) years, a dozen times or more, and nothing gets done. So I appreciate the chance to let you know my feelings on this. And again, I think B&Bs are great, I think these people should have an opportunity to be legal, but it's not all roses. They're having neighbors who are affected, they just don't know it because most of us don't say anything, but I started saying something when a guy walked into my house in the middle of the night, thinking I was the B&B. Thank you.

Chair Mahoney: Thank you for your testimony.

Mr. Dahilig: Erik Paul, followed by Lorna and John Hoff, followed by Cathy Cowern.

Erik Paul: My name's Erik Paul. My wife, Amy, and I moved here from Alaska in 2011 with our seven (7) children. We live in Kapa'a. We enjoy the island, we love the people, and I appreciate the opportunity to come here and speak today.

I fully support a valid clear and concise homestay ordinance. I think that everybody who currently operates a homestay; whether it's through VRBO, Airbnb, any one of these services; fully deserves the opportunity to, not only supplement their income, but contribute to the tax base of this island and show tourist aloha.

We have operated a homestay in our house for the past year. We've hosted dozens of people, and couples with children, from all over the world. Like most others, we've never had a complaint. Our neighbors are happy; they like us, they like the people that are coming to stay with us. We've never had a guest wonder into a neighbor's house, that's kind of an odd one.

I think the whole point of this meeting is to let you guys know that folks that are currently operating a homestay or TVR type operations, are fully committed to the legal process. We want to be compliant, we want to have a clear and concise permitting process that makes sense, we want to pay our taxes, and I believe it would contribute greatly to the Kaua'i County's coffers.

I know that the guests that we've hosted, they've also left us glowing reviews. We've made great friends and acquaintances over the past year or so. I see them spending lots of money, they're very quiet, but I would just encourage you guys to take into serious consideration, the impact that a good homestay ordinance will have on the community.

Like most others here, my wife's a stay-at-home mom, we operate on one (1) income, and the rental that we have allows us to live here. It allows us to pay taxes, it allows us to shop at Costco, and buy cars. We would be fully committed to being in complete compliance. I just hope that you guys would give serious consideration to it and develop a very clear cut, well thought out plan that allows current operators to be in compliance, and get the necessary permits, and continue to contribute to Kaua'i. Thank you.

Chair Mahoney: Thank you.

Mr. Dahilig: Lorna and John Hoff, followed by Cathy Cowern, and Mr. Chair after Cathy Cowern, if we can at that point break for a caption break, and then at 11 o'clock take the Kaua'i Springs matter, and then return back to public testimony on this particular item.

Chair Mahoney: Okay, thanks.

Lorna Hoff: My name is Lorna Hoff. Aloha Madam Chairwoman, Commission members, and interested guests. Frankly, I'm here because I really would appreciate your help in

this matter. My husband, John, and I have been involved in agricultural endeavors on our property for over forty (40) years, plus operating a B&B business in our home for over ten (10) years.

Our land is zoned ag and our property is in a legitimate ag use. We have had no complaints at all during those forty (40) years plus, nor in the ten (10) years that I've been in operation with a B&B. We have been in agriculture with no complaints at all (inaudible). Our neighbors support what we're doing, and we simply do not understand why, after forty (40) years plus, you are pushing to shut us down.

Because we live on agricultural land, it is very difficult to make a living solely from farming, or raising seed plants, turf, and inventory and nursery grade stock for my son's licensed landscape business. In order to live near our family and continue...it's very emotional...and continue with our landscape operations, John and I needed to implement our income by opening our home as a B&B. By opening our home to paying guests, we are able to continue to provide the plants essential to my son's business. I included and attached a letter from my son explaining why it is essential to his business. And then we can afford to stay in our home. I believe everyone is aware, how difficult it is to make money on ag use land. We would appreciate your consideration and understanding. Thank you.

John Hoff: My name's John Hoff. Mr. Chairman, Commission members, and ladies and gentlemen, Aloha. Probably...probably the best reason for allowing B&B and homestays...

Mrs. Hoff: Can I read it for him?

Chair Mahoney: Yes.

Mrs. Hoff: Aloha, I'm Lorna Hoff, I'll read this for my husband, John. Probably the best reason for allowing B&B and homestays into our ag lands, in my opinion, is that I consider aloha perhaps the most precious crop one can ever harvest, as well as, being Hawai'i's greatest export. The Aloha Spirit.

Lorna and I have been in several business in our almost fifty (50) years of living on Kaua'i. Lorna with her horses, milking cow, dogs, cats, orchids, landscape trees, flowers and grasses, a wild baby boar, a peacock, cattle, and chickens, you name it; myself in general contracting and education as a substitute teacher. We never exported our product until we opened our B&B/homestay over a decade ago.

We discovered a new clientele of individuals coming from around the whole world, enjoying themselves so much that many are returning to Kaua'i for second (2nd) and third (3rd) visits, rather than traveling elsewhere. Our small ag farm is not a large prairie of flat land capable of growing vast acres of corn, or sugar, or pineapple; but we can grow small plants and trees for your home landscaping needs on our sloped and cavernous topography. The product we grow will stay on Kaua'i destined for our son's landscape projects.

But aloha, we can export that and have fun doing it, so I recommend you put aloha on the list of Hawai'i's exports. I assure you, Hawai'i's export list is very, very, very short in terms of items. Let us nurture aloha on ag lands. Thank you very much. Sorry for our emotional (inaudible).

Chair Mahoney: No, thank you for your testimony.

Mr. Dahilig: Cathy Cowern.

Cathy Cowern: My name is Cathy Cowern and I would like to thank you for giving me the opportunity to speak to the issue of homestays. Today I want to share some of our personal experience.

In 1986, my husband, Bill, and I were lucky enough to purchase a piece of agricultural land in Lāwa'i valley. Our dream was to make our home on Kaua'i. In 1990, we packed up our two (2) baby daughters and made the move. Our parcel is very steep, but seemed to be a perfect location to plant trees. Little did I know how many trees Bill would eventually plant on Kaua'i. We also had a vision of including a bed & breakfast, or homestay business, to help financially as farming timber is a long term investment. We built our home and guest house to make this happen.

We obtained our GE and Transient Accommodation Tax Licenses. We've been operating our homestay business for twenty-three (23) years, have learned how to attract guests, and how to tolerate having guests with you 24/7. We have weathered the loss of business from Hurricane Iniki, the 9/11 terrorist attack, and the market crash of 2008, where tourist again stopped coming to Kaua'i.

Over the years, we have had the opportunity to house a variety of people from all over the world and the islands. One of our first guests was, in fact, the newly hired Director of Planning and his wife in 1991. We have housed guests from Habitat for Humanity volunteers, and TBG visiting volunteers, members of the military, and visiting musicians for our church. We have provided housing for Kaua'i marathon runners, and workers from outer island needing temporary housing. We have also enjoyed guests from many different countries, and many parts of the United States. This variety of guests and experiences, I think, has helped to open up the world to my children, as they shared their stories and experiences with them.

After twenty-three (23) years, our timber trees have matured into a lovely arboretum that we are able to share with our guests. They learn about the trees, forestry, and the history of island, as told through the trees from us. We have also been able to help our neighbors with our homestay business. When they have weddings, funerals, family reunions, we have provided a place for them to stay. We have never had a complaint from our neighbors. We maintain our home and property in excellent condition as well, although Bill does park the occasional tractor on the front yard.

Our home is located such that we are far from neighbors' homes and we can't see them. We are home, and we are able to deal with any problems our guests encounter. We find that the guests who choose to visit a homestay would not likely stay in other forms of accommodation. There are those that come for the education and beauty of Kaua'i, not to party. They spend their days

hiking, enjoying the many activities Kaua'i residents offer, and frequent local restaurants. I think the economic benefit they provide to local businesses is also very important.

We have tried to contribute to the community of Kaua'i over the years, donating our time and whatever we can. We would not have been able to do our timber business, or do the amount of volunteering that we do, had it not been for our homestay business. It has raised our family and supported us. Thank you.

Chair Mahoney: Thank you for your testimony.

Mr. Dahilig: Mr. Chair, after the Kaua'i Springs matter and after the break, will be Bill Cowern, followed by Candy Bäär, followed by Cliff Van Dyk.

Chair Mahoney: At this time, we're going to take a recess for caption break.

The Commission recessed this portion of the meeting at 10:52 a.m.

The Commission reconvened this portion of the meeting at 11:05 a.m.

UNFINISHED BUSINESS (For Action)

Consideration to withdraw Class IV Zoning Permit Z-IV-2007-1, Use Permit U-2007-1 and Special Permit SP-2007-1 due to lack of information to complete the application and applicant's lack of willingness to pursue the application = Kaua'i Springs, Inc.

Mr. Dahilig: Thank you Mr. Chair. We're on Item M, Unfinished Business. Consideration to withdraw Class IV Zoning Permit Z-IV-2007-1, Use Permit U-2007-1 and Special Permit SP-2007-1 due to lack of information to complete the application and applicant's lack of willingness to pursue the application. Just as a recap to the Commission, the Commission at the last meeting did determine that there was an oral request to move forward with the hearing. The Commission accepted that, but there were outstanding legal questions that the Commission had posed to Commission Counsel on the matter, and I'll turn it over to him to get the Commission up to speed on this matter.

Deputy County Attorney Ian Jung: Okay, Commissioners. From the last discussion we had on this, the question was, is it a new agency hearing, or a continued agency hearing, or what's the next step with the process? I think what we outlined is that this is an unusual circumstance where the case will come directly back to the Commission itself, rather than going to Circuit Court. So what we made the call on is that it was a continued agency hearing, which in effect, the court limited the analysis to the public trust factors. On page 85 of the 100 plus brief, or opinion of the Supreme Court, it identified factors of which need to be addressed. In the case as we discussed the last time, that it was up to the applicants to have the burden to establish these factors. So, the next step would be to basically set the continued contested case hearing, and have the approach on the contested case hearing be limited to the factors of the public trust obligations. I think we have representation from the Department, as well as the Applicant. If the Commission has any further questions, I can address those, but I believe for this particular meeting it's just going to be a scheduling meeting so we can identify a time to move forward,

and whether or not a hearings officer is going to be appointed to handle the matter. Anyone have any questions on this? And I think what the Commission should do is let both the Department, as well as the Applicant, have an opportunity to address process as well, so they can be at least heard on the issue.

Chair Mahoney: Okay, would the Applicant like to speak on the matter?

Robert Thomas: Yeah, just for a few minutes or short remarks if you would, Mr. Chair. Mr. Chair, Commissioners, Counsel, and Mr. Director, thank you. My name is Robert Thomas, and I represent Kaua'i Springs and the Satterfield Family in the Supreme Court. First of all, I wanted to apologize for any misunderstandings that we had some internal confusion on our side about, you know, my usual kuleana isn't processing permits here on Kaua'i. We thought Jim had some representation or the possibility of having some legal help here, but he had to settle on us again because this is such a complex matter and I think as we're forging new territory, as your counsel said, so I apologize for at the last meeting if there was any confusion. We wanted to come here today for three (3) things.

First of all, as we suggested in our letter that we've handed out to you, to formally clarify that we haven't withdrawn the application; agree with your analysis, Counsel, that this is not a reboot, with the Supreme Court said the only things that need to be handled on this very unusual remand directly to the Commission is those issues that were outstanding, and we too, view those as only the public trust issues as outlined probably from pages 40 through 120 of the Supreme Court's lengthy opinion.

Two, to provide you at least our initial view of how that opinion should be read, and what kind of duties it says you have under the public trust and what is the burden of the Applicant, Kaua'i Springs, to provide in the way of data and other things to show that this is a reasonable and beneficial use of the water.

From my read of the minutes of the last meeting, there was a request that we also formally ask the Commission for specific relief, and that is to grant the permit applications that were filed in 2008. There's a 2008 application for a Special Class IV and a Use Permit, and that's what we believe continues to be before the Commission today. If there's any need to supplement that application with additional details, we think that's what the purpose of either a hearings officer to facilitate taking of that, gathering of that information, calling down the arguments, and then making a recommendation to you. So we agree, fully, with your Counsel on his analysis of that.

And we're here to answer any other questions that you might have, and maybe to suggest that this is something that time is not of the essence. We are outside of the usual automatic approval deadlines. We think the Supreme Court took care of those, so we're sort of operating free range here. And because the way that the opinion is structured, this issue will arise in your cases from now on because the Supreme Court clarified that every agency and commission, such as yourselves even though you're not the State Water Commission, has public trust duties of inquiry. If there's any question about impact upon the public water resources, that you then have a duty to investigate, ask questions, and make certain analysis.

We're hoping, since this is the first time we're all doing this, maybe we can provide some help for future cases if we set out a procedure for how to handle these type of matters into the future. We suggest that what that militates is having us go slowly, carefully, do it right, and then be able to replicate this process in your future cases. Unless you have any questions, we're more than willing to work with the Department and with your Counsel about the actual procedure for taking the evidence that the Supreme Court says that you need to look at in this case, and then presenting it to you in a manner that so you don't have to comb through with us through the 120 pages of Supreme Court opinion.

Chair Mahoney: Thank you. You're finished with your statement?

Mr. Thomas: Yes.

Chair Mahoney: Could we hear from the Department on the matter please?

County Attorney Mauna Kea Trask: Aloha, good morning, Honorable Chair, Commission Members. For the record, I am Mauna Kea Trask, County Attorney, County of Kaua'i. I spoke with Mr. Thomas about this case and we both agree that we got some work to be done. It's the Department's position...I just want to say a few things for the record consistent with the language in the Kaua'i Springs case Supreme Court decision.

As we all know, the Public Trust Doctrine of the State Constitution applies to all water resources without exception or distinction. The State Water Resource Trust pursuant to the Public Trust Doctrine of the State Constitution embodies a dual mandate of protection and maximum reasonable and beneficial use, under Constitutional Article 11 Section 1. Pursuant to the Public Trust Doctrine of the State Constitution, the public trust is the duty and authority to maintain the purity and flow of waters for future generations, and to assure that the waters of the land are put to reasonable and beneficial uses, as stated by Mr. Thomas. Pursuant to the Public Trust Doctrine of the State Constitution, the duty and authority of the State and its subdivisions, which applies to the Planning Commission, is to weigh competing public and private uses of water on a case by case basis. It's independent of statutory duties and authorities created by the legislature. Furthermore, private commercial use of water is not protected by the Public Trust Doctrine of the State Constitution. The Constitution again (inaudible) a Constitution Article 11 Section 1. In accordance with the fundamental principles of the Public Trust Doctrine of the State Constitution and the fact that private commercial use of water is not one of the uses the Public Trust protects, a higher level of scrutiny is employed when considering proposals for private commercial use. And when an agency is confronted with its duty to perform as public trustee under the Public Trust Doctrine of the State Constitution, it must preserve the rights of present and future generations in the waters of the State. Pursuant to the Public Trust Doctrine of the State Constitution, an agency must take the initiative in considering, protecting, and advancing public water rights in the resource at every stage in the planning and decision making process. According to this case, the Supreme Court has clarified that pursuant to the Public Trust Doctrine of the State Constitution, an agency is duty bound to place the burden on the Applicant to justify the proposed water use in light of the trust purposes. Pursuant to the Public Trust Doctrine of the State, permit applicants must demonstrate their actual needs, and within the constraints of available knowledge, propriety of draining water from public streams to satisfy those needs.

Finally, just for discussion today, pursuant to the Public Trust Doctrine of the State Constitution, a permit applicant is obligated to demonstrate affirmatively that the proposed use will not affect the protected use. In other words, the absence of evidence that the proposed use would affect a protected use is insufficient.

The reason why I stated that for the record is that it's from the case, it's inarguable, but what that means beyond that is I guess what we're here to discuss today. The Department does support addressing this, as I think we're mandated to by the Supreme Court, and participating in this process and the applicant's opportunity to fulfill the tenets of the case. So I think with that, we have no objection to this being referred to a hearings officer and proceed with scheduling, and/or if this Commission so chooses to take on the burden itself, but it is a complex area, so we would be fine with the hearings officer as well. Thank you.

Chair Mahoney: Thank you.

Attorney Jung: So now would be the opportunity for public testimony.

Chair Mahoney: Is there any members of the public who would like to testify on this matter?

Mr. Dahilig: Mr. Chair, before you call, I want to say that nobody has signed up on the agenda, but we do have written testimony from Karen Klock, as well as testimony from Mike and Dara Fugett.

Mr. Abrams: And Mike Harismendy.

Chair Mahoney: Gentleman, come up and testify. State your name for the record, please.

Matt Bernabe: Matt Bernabe. You know in the big picture, water is going to be the next thing everybody's fighting for. I know for a fact that these guys, before they started this business, went in Kahili Mountain, above the school, and imploded the concrete spring that was put back in the plantation days, that no matter how muddy was, would always, you could fill your bottle there. And so they could divert it back down, they imploded that back in the day. You no longer can go to that spring, so by that alone, they've demonstrated they're not in good faiths. And that's all I've got to say.

Mr. Dahilig: Thank you Mr. Chair. Sorry, I did miss one name. Tessie Kinnaman.

Chair Mahoney: Could you state your name for the record please?

Tessie Kinnaman: Aloha, Tessie Kinnaman for the record. I agree and ask that you approve what's before you. I'd like to read some sources from the Ola I Ka Wai manual that was written up by Professor Kapua Sproat. I'd like to start with a water source, a place within or from which water is or may be developed, including but not limited to; one, generally an area such as a watershed defined by topographic boundaries or definitive ground waterbody; and two,

specifically a particular stream, other surface waterbody, spring, tunnel, or well, or related combination thereof. That's from the Hawai'i Revised Statutes 174c.

Also, the Public Trust Document that Mauna Kea covered. Public Trust Doctrine, principal embedded in the Hawai'i State Law that recognizes that water is held in trust by the State of Hawai'i for its present and future generations. In quote, for the benefit of present and future generations the State and its political subdivisions shall conserve and protect Hawai'i's natural beauty and all natural resources, including land, water, air, minerals, and energy sources; and shall promote the development of utilization of these three sources in a manner consistent in their conservation and further self-sufficiency of the State. All public natural resources are held in trust by the States of the benefit of the people. Hawai'i Constitution Article 11-1. And of course there has been constitutional mandates in '78 that were approved that all natural resources are held in trust by the States for the benefit of the people. The Constitution makes specific reference to water including the directives to protect, control, and regulate the use of Hawai'i's water resource for the benefit of its people; and so was adopted the Public Trust Doctrine as a fundamental principle of Constitutional Law in Hawai'i. Long before the Constitution provisions described above, cases and laws from the Kingdom of Hawai'i, along with Hawaiian custom and tradition, firmly established the principle that natural resources, including water, were not private property, but were held in trust by the government for the benefit of the people. Today in Hawai'i, courtesy of the Constitution water code and common law, the State water resources trust...

Chair Mahoney: Could you wrap up your testimony please?

Ms. Kinnaman: Okay. In conclusion, we came by in 2005 and testified against the Kaua'i Springs application; and as an aside waters of Waikomo Stream, Waihohonou, the covenant Konohiki law was that 350 million gallons be going through and out to (inaudible) Kōloa Landing. In watching the stream deteriorate,...I was born in Kōloa, so I've watched it deteriorate because I used to go crayfishing, frogging in that area, so I know how deteriorated it is and there's no 350 thousand gallons running through that stream anymore. The stream is dead. And I hope that the Commission approves the Department's request. Mahalo.

Chair Mahoney: Thank you for your testimony.

Mr. Dahilig: That's all I have for testimony, Mr. Chair. I guess the proposal between both the Department and the Applicant is to ask that this matter (1) be referred to a hearings officer, and (2) that it receive evidence consistent with Hawai'i Supreme Court opinion to supplement the record, and that (3) the hearings officer would provide an amended decision and order, based on the additional evidence, back to the Planning Commission for its entertainment and approval.

Chair Mahoney: We incorporate this in one motion?

Mr. Dahilig: Yeah.

Chair Mahoney: Chair will entertain a motion.

Mr. Abrams: I move that the Commission have a hearings officer handle all of this, except evidence, and come up with a recommendation; after doing that, back to the Commission. Anything else I need to add?

Attorney Jung: I would suggest following that it follows the agency hearing process as a continued agency.

Mr. Abrams: Yes, yes. And yes, it is a continued agency hearing.

Chair Mahoney: Is there a second?

Mr. Keawe: I'll second the motion.

Chair Mahoney: Any discussion?

Ms. Mendonca: I have a question for Mike on this discussion. (Inaudible) going through the hearings officer, and it comes back, and then we get a chance to review with recommendations the hearings officer is making on this?

Mr. Dahilig: That's correct.

Attorney Jung: Just for clarity, the process is that if the hearings officer makes a recommendation, there is specific protocol in the rules that allow each party opportunity to submit their proposed findings of fact conclusions of the law. In this case, it'd be limited to the issue at hand and then the Commission would weigh those...the hearings officer would weigh those, make a recommendation to the Commission, and the Commission would have the chance to make a decision on that recommendation; or ask for more information if necessary.

Ms. Mendonca: And it is subject to our approval?

Attorney Jung: It is subject to your approval. The hearings officer would only make a recommendation and then that recommendation would be just that, as a recommendation.

Chair Mahoney: Any further discussion? (None) Moved and seconded with no further discussion. All in favor? (Unanimous voice vote) Opposed? (None) Motion carried.

On the motion made by Commissioner Abrams and seconded by Commissioner Keawe to refer to a hearings officer for recommendation back to the Commission as a continued agency hearing, the motion carried by unanimous voice vote.

HEARINGS AND PUBLIC COMMENT (Continued)

Continued Public Hearing

Zoning Amendment ZA-2015-4 : A bill for an ordinance amending Chapter 8, Kaua'i County Code 1987, as amended, to establish a process to permit Homestays in the Commercial Districts, Resort Zoning Districts and Residential Zoning Districts = County of Kaua'i, Department of Planning.

Mr. Dahilig: Thank you, Mr. Chair. If we could return back to public hearing for zoning amendment 2015-4. Bill Cowern, followed by Candy Bäär, followed by Cliff Van Dyk.

Bill Cowern: Name is Bill Cowern. The issue of homestays is obviously very important to us and to most of the people that came to this hearing. The only issue that I wish to address today is the exclusion of agricultural lands or farm stays in any proposed ordinance.

In the past fifteen (15) years, according to the National Agricultural Law Center, twenty-five (25) states in the United States have passed agricultural tourism legislation proposing that it be encouraged and proposing that it be allowed, including transient rentals on agricultural property. The reason, and Hawai'i obviously being one of those states, the reason this was passed was because there are some very distinct advantages to allowing that to take place. First being that, in many cases, small farmers can supplement their income here, and actually be able to keep their farms, as opposed to losing them because agriculture's an extremely difficult way to make a living, and I can attest to that. We've had nineteen (19) years without income on our tree farm, hopefully we'll get some this year.

The second is that tourism farm stays, homestays on farms, are far less likely to cause a problem to any of your neighbors. We live on about three (3) acres of land. The nearest neighbor to us is probably a football field away. There's plenty of room for parking. If you wanted to park on the street, you'd have to walk a quarter mile up the hill, so they're not going to park in the street. Logically, and I tend to...my wife will tell you this...I tend to think logically, I just don't understand why it's better to put homestays in densely populated residential areas, as opposed to ag or open, where you got more room. For the life of me, I can't figure that out. So anyway, that's all I have to say. Thank you.

Chair Mahoney: Thank you for your testimony.

Mr. Dahilig: Candy Bäär, followed by Cliff Van Dyk, followed by Bruce or Cynthia Fehring.

Candy Bäär: Good Morning. My name is Candy Bäär. I live on the west side, and I had a homestay in my home. It really allowed me income to stay on Kaua'i. I have a small business; my husband works at a medical facility on the west side. In 2008, my small business took a hit, and we had to find alternative ways for income, so we started a homestay and we were listed on Airbnb. We have had really good luck and no problems whatsoever.

We live in a residential area and our home is completely fenced in and gated. You'd arrive in through the driveway, and you park. We would host no more than two (2) people at a time. Without this kind of income, it would be really a struggle for us.

I would just like to declare my support for everything that was said, and I can relate to what much of the testimony was and feel that it would be beneficial to the County and to the State for tourism and for the individuals living here to have expedited regulations and yeah, reasonable. Thank you.

And also, I think that it needs to be looked at uniquely because there are so many different unique situations; there are homestays, and there are B&Bs, and there are just B's, and there are many different kinds of accommodations that I think that needs to be looked at. If it's not feasible, if our taxes go up so much, it's not feasible to do, then why would I do it, and I would have to leave.

I know from personal experience, from talking to almost 95% occupancy over a four (4) year period, and I have a small business in Waimea that these people could use the activities, and the restaurants, and they would spend money on the island; where they might not even come because they couldn't afford any other kinds of accommodations. So we provide accommodations for a group of people who spend money, and enjoy our beautiful island. So, thank you.

Chair Mahoney: Thank you for your testimony.

Mr. Dahilig: Bruce or Cynthia Fehring. Oh, Cliff Van Dyk, sorry, followed by Bruce or Cynthia Fehring.

Clifford Van Dyk: Aloha, thank you for your time. My name is Clifford Van Dyk, and I'm here to support the bed & breakfast, homestay regulation changes. Clearly, there is a large demand for this service. If there is three hundred twenty (320) people operating bed & breakfasts and being successful at it, there's a large demand for it; and obviously as well, there is an equally large desire to provide that service here on the island. People living here that want to provide that service in their home.

Permitting allows dollars coming into the Kaua'i economy at a private level, right into the families where there is a need, and it allows for an improved quality of life. It also provides for taxes on those services, to provide more money for the county. This is a win-win situation.

I have a desire to start a homestay. I want it to be a legitimate business that pays all of its fees, and all of its taxes. Frankly, I was surprised to hear the County's been changing property taxes and collecting taxes from businesses that it doesn't acknowledge, won't grant a permit, and now isn't going to allow to function.

I think the decision's really clear. The only real question is, how we're going to allow these homestays to function, to get them licensed, to get them legal on the main line and working properly, that's what we need to focus on. I think testimony here today was really clear. Everybody sees a need, we just have to find it and make it legitimate. Thank you.

Chair Mahoney: Thank you for your testimony.

Mr. Dahilig: Bruce or Cynthia Fehring.

Bruce Fehring: My name is Bruce Fehring. I'm representing myself, my wife, my family. Thank you for hearing my testimony. We're thirty (30) year residents of Kaua'i. We're full-time farmers feeding many dozens of residents and visitors by our farmer's markets and community supported agriculture. You may have heard the joke about the farmer who won a \$3 million lottery. When asked what he would do with the money, he thought for a while and replied, well I figure I'll just keep on farming until it's gone.

Small businesses, sustainable family farming is a (inaudible) profession, one in which we are proud to be fully committed to. It is not an easy way to make a living. Small farmers like ourselves typically require supplemental income to make our ends meet. Homestay on a farm, where the farmer resides, known worldwide as agricultural tourism, or agritourism, is an ideal way to achieve such supplemental income.

I won't delve into the many benefits of homestays, as others have effectively testified to that effect. I will say however, that agricultural and open lands are the ideal place to host small numbers of guests; not areas where homestays should be prohibited. Nor should those on agricultural lands be required to provide paved parking spaces for themselves or their guests. Gravel parking is not only adequate, but the more environmentally sustainable choice.

Regarding quotas on homestays in census designated areas, this would nearly eliminate the possibilities of achieving homestay permits in rural areas; the areas where they may be most appropriate. I have also concern about the proposed cap of ten (10) homestay applications per calendar year to be considered by the Commission. Should we also similarly limit all other permits rented by the County? I may be dead by the time I can apply for a permit. The chances of our winning a lottery seem pretty slim. Thank you.

Chair Mahoney: Thank you for your testimony.

Mr. Dahilig: Mr. Chair, that's all I have signed up to testify. You may want to make one (1) final call for any of those that have not signed up to testify at this time.

Chair Mahoney: Is there anybody in the public that has not signed up, but would care to testify?

Kirby Guyer: My name is Kirby Guyer. I have a bed & breakfast in Wainiha. I have been operating since 2000; I bought the land in 2000, operating since 2003; built the house specifically as a bed & breakfast; have paid all of my taxes over all of this time, and I'm still paying them. I have been here before, and I want to say "hi" to all of you because I have seen you all before, but I was in the audience. We need an ordinance we can work with, that we can work with you on. I'm happy to do it. I've been doing bed & breakfast for thirty (30) years on this island; fortunately now in my own home, under one roof, with no out buildings or trailers being rented in the yard. Yes I have parking, and yes I have septic. We need to have definitions of what is a homestay, of what is a bed & breakfast; how we can, just human beings, apply properly for this ordinance or to follow an ordinance. I know that almost everyone here is willing to work with any individual in the Planning Commission, in the Planning Department, to

assist, and sit down, and just discuss it, and get it done. It's been so many years since (inaudible) well, we'll deal with them separately someday; well I think the someday is now. As far as I'm concerned, this is me, personally, our only income, and I'm seventy-five (75) years old. I had plan to do it until I just fall over and die, which is going to be inevitable at one point. In between time, I would like to work with the County and not have the kind of stress that, am I doing something wrong, is this the way you want me to do it. Please, please let all of us here help. I know many of these people, and they're honest and good citizens. They want to do what is right, let them operate their small business. This makes money for this County. And give them the time to help, give them the opportunity to help you, and then they'll help themselves at the same time; and we're willing to do it. Thank you very much.

Chair Mahoney: Thank you for your testimony.

Vel Alahan: My name is Vel Alahan. Commissioners, legal people, and guests, just wanted to say, before I moved here to Kaua'i and did a homestay, I used to stay on ag land, and Major Inch. He stopped doing the homestays years ago when you raised the taxes. He felt he couldn't afford the taxes on the ag land, so he stopped his homestay. It was wonderful to stay there. I'm sure everybody here would love having stayed at Major Inch's; a wonderful man, wonderful farm, hard-working, made me love Kaua'i. It was better than...and previous to that I always stayed at hotels.

So I had a homestay and I got shutdown. They sent out a...this is past history...they sent out a survey that I filled out honestly, thinking I had a legal homestay because it was done before I moved here, I owned the place, I had it managed by a professional real estate person who paid all the taxes and did everything, and now I had to...they were nice enough to give me two (2) weeks to shutdown, call up people, cancel people's vacations for them.

Now all I ask is that the Commissioners, the Council, the County of Kaua'i have a reasonable path forward, not something that's going to cost, for someone who rents out one (1) bedroom like I do, that's going to cost \$6,000 or \$8,000, which is more than a year. They raised my taxes, they doubled my taxes from \$1,200 to \$2,400 twice a year. The whole house, 400 square foot is the homestay, but the whole house got the jump in taxes, and we still don't know if they're lowering my taxes now that they've...one year it says "vacation rental", one year it says "single family residence", one year it says "vacation rental", and now it says "commercial". Anyhow, we would like to see the County have a reasonable path forward for those of us who really enjoy doing the homestay. Thank you.

Chair Mahoney: Thank you for your testimony.

Barbara Robeson: Mahalo. Thank you Chair and Commissioners. Barbara Robeson for the record. I did pass out my testimony after the fact. I'm just writing in support of the proposed homestay bill amendments that were distributed in Exhibit A, which was the supplement no. 1 to the Director's report. I encourage the Commission, and hopefully that you will approve that Exhibit A today, so that the bill can move forward to the County Council for their action and their final approval.

As homestay definitions, and other related bills progress, I'd also recommend that to protect the safety and welfare of our residential communities, that future bills adopt the position that no homestay, bed & breakfast, or transient vacation rental permits will be allowed in tsunami evacuation zones. I had a copy of the tsunami evacuation zone that came from the County of Kaua'i Civil Defense map on my testimony.

I also want to say mahalo the Department of Planning because I know they been working on this for many, many years, and vacation rentals in the Hanalei district, of course have increased the intensity of use and the negative cumulative impacts in the special management area, so I appreciate the opportunity to come forward today. Thank you very much.

Chair Mahoney: Thank you for your testimony.

Caren Diamond: Aloha Commissioners. My name is Caren Diamond. I do support the bill before you today, and urge you to take action on it as well, and support it. I come from the north shore where we've had the most impact from the cumulative...it's a cumulative impact from so many vacation rentals having been approved. It's actually interfered with the safety and safe evacuation where the tsunami inundation district. It's really the wrong place for a resort, and so when you look at crafting an ordinance, I urge you to craft one that also does not allow for more commercial and resort uses in the north shore inundation zone.

I think that the bill before you today actually works to help (inaudible) too many people coming before you all at once, before you actually get an ordinance in place that deals with all the details that need to be dealt with.

I want to go back to 2005 because I was part of that stakeholder group that formed to work on vacation rentals. It's been our problem for a very, very long time. In 2005, when they decided to take bed & breakfast out of it, it was because there is, and there was, a use permit process for that. While vacation rentals were deemed to be kind of a gray area, the B&Bs were not gray at all. It always required a use permit. While I feel for everybody that didn't get a use permit that process has been available, and I don't understand why people didn't use it.

More commercial uses in residential areas is really problematic, so I'd urge you, before you open up any process that allows more commercial and resort uses in our neighborhoods, that the vacation rental issue is dealt with, that amortization and reduction of uses that have already...that are out of hand be controlled, and then you might be able to consider adding bed & breakfast to it. I think things were done backwards, and until there is some control and ability for safe evacuation and commercial districts to actually have commercial things, and residential areas to have residential uses, I think it's problematic to go down the road of allowing too many more commercial uses.

So I urge you to support today's bill, and thank you. If you can't support today's bill, I urge you maybe to think about a temporary moratorium, so that until there is a longer, more comprehensive bill put out, that you don't have more and more things come before you. Thank you for your consideration.

Chair Mahoney: Thank you for your testimony.

Lee Roversi: Hi, my name is Lee Roversi. I just want to reiterate one (1) thing; I know you've heard it before. In the general plan of 2000, the wording is really specific. The intent in alternative visitor programs is to broaden the range of experiences and activities offered to visitors, cultivate niche markets, and create entrepreneurial opportunities. The draft tourism strategic plan advocates allowing alternative visitor accommodations within agricultural lands, as one part of a strategy for supporting ag based tourism. The concept is that visitors could enjoy an agricultural setting, providing revenue to enable the landowner to maintain large land areas in less profitable ag use. Small country inns are popular in rural areas. Ag tourism can be bundled with other themes. That's in our own general plan.

Then, locally owned small businesses, alternative accommodations, such as B&Bs, keep a large share of their revenues within the County and the State. For example, a B&B or vacation rental owner is likely to buy equipment and supplies from local business. They also spend typically their net profit on Kaua'i. As money is spent and re-spent, more local businesses and job holders benefit. That's from our own general plan, which we seem to be tossing out in this discussion.

Also, State Zoning 205-5, each county shall adopt ordinances setting forth procedures and requirements, including provisions for enforcement, penalties, and administrative oversight for the review and permitting of agricultural tourism uses and activities, as an accessory use on a working farm or farming operation, as defined in. That's all I have to say. It's in our own County and State wording, and we are ignoring it. Thank you.

Chair Mahoney: Thank you for your testimony.

Mr. Dahilig: Mr. Chair, given that nobody else has elected to testify at this time, I would ask that the Commission actually defer...

Chair Mahoney: We'll allow one more.

Eddie Henry: Hello, my name is Eddie Henry, and I'm part of this community of bed & breakfast owners. We've been open since May of 2006, and have had a successful business, bringing tourism into this island. Same as myself, and everybody here, we all have endearing stories of taking care of the island. Our passion for the community being a part of it. We've all shown here that we haven't had, or afforded, a legal process that you guys are seeking. Although, we've asked for a number of years for that process.

So, not to repeat what the rest of my community has already expressed, I really have some questions for the Planning Department, as to why this is happening. Why...I mean a cease and desist order, treated like criminals, referred to as criminals in the paper by Mr. Dowling as drug dealers, and white collared criminals. I am perplexed. Why is this happening? Why are we being treated like criminals? Why is there a crackdown on small business operators? What is the motivation behind it? We pay our taxes, we're good citizens, it's very curious. I'm perplexed. I wish you guys can shed some light as to your motivation. I live on the north shore, have my business there. I've had to call the Police numerous times, as my guest were robbed

because my worst nightmare. We have drug addicts in the area, known drug dealers, real criminals that have been around for years that the Police enforcement know about, and my worst nightmare, my guests get robbed. I have been to the Police Chief, I have been talking with the community to have the real criminals...have a crackdown on them. So that doesn't seem to be happening. That's a real ongoing criminal problem that is happening and hurting our island, but instead its bed & breakfast owners that are being treated as criminals, and being told to cease and desist, and taking away their livelihood. Again, my question is why. Thank you.

Chair Mahoney: Thank you for your testimony.

Mr. Dahilig: Okay, Mr. Chair, as I was saying, given that members of the public have elected to testify, and have already come and testified for this public hearing, I ask that the Commission actually defer determining whether or not to close the public hearing until this matter is taken up later on in the agenda. Part of that is because the presentation before the Commission will articulate the proposal based on an amended bill, and the suggestion that a lot of the items that have been brought up in public testimony may be addressed by a second bill. So, rather than have that discussion at this time, and rather than rush a closure of the public hearing, I'd ask that the Commission at this time defer until such time as the matter is taken up for discussion before the Commission later on today.

Chair Mahoney: Chair will entertain a motion.

Mr. Abrams: Move to defer the Zoning Amendment ZA-2015-4 to the public hearing to later on today.

Ms. Mendonca: Second.

Chair Mahoney: Moved and seconded. Any discussion? Hearing none. All in favor? (Unanimous voice vote) Opposed? Motion carries.

On motion made by Commissioner Abrams to defer ZA-2015-4 to the public hearing at a later time, seconded by Commissioner Mendonca, motion carried unanimously by voice vote.

New Public Hearing

Zoning Amendment ZA-2015-5: Proposed Bill No. 2459 for an ordinance to amend Article 8, Section 8-8.6 of the Kaua'i County Code (1987), as amended, to allow Farm Worker Housing Permits to be issued to farmers who condominium property regime (CPR) declarations have been amended after August 16, 2010 = County of Kaua'i, County Council.

Mr. Dahilig: Thank you, Mr. Chair. We are now on Item 4, New Public Hearing, Zoning Amendment ZA-2015-5 proposed Bill No. 2459 for an ordinance to amend Chapter 8, Section 8-8.6 of the Kaua'i County Code (1987), as amended, to allow Farm Worker Housing Permits to be issued to farmers who's condominium property regime declarations have been amended after August 16, 2010. The applicant is County of Kaua'i, County Council and there's a director's

report for this matter. Mr. Chair, at this time the Department would recommend opening the public hearing.

Chair Mahoney: Move to open the hearing.

Mr. Dahilig: Mr. Chair, given we've received no testimony and no one has signed up to testify on this particular item, I ask that the Commission make a final call for testimony on new public hearing.

Chair Mahoney: Is there any member of the public that would like to testify on this agenda item? Seeing none.

Mr. Dahilig: Mr. Chair, given that nobody has elected to testify at this particular time, the Department would recommend closing the public hearing.

Chair Mahoney: A motion?

Mr. Abrams: Move to close the public hearing.

Mr. Keawe: Second.

Chair Mahoney: Moved and seconded. Any discussion? Hearing none. All in favor of closing the public hearing? (Unanimous voice vote) Motion carries.

On the motion made by Commissioner Abrams and seconded by Commissioner Keawe to close the public hearing, the motion carried by unanimous voice vote.

EXECUTIVE SESSION

Mr. Dahilig: Thank you, Mr. Chair. We are now on Item I. There is no executive session for this afternoon.

GENERAL BUSINESS MATTERS

Petition to Appeal the Decision of the Planning Director by Ian & Anna Cronshaw concerning Transient Vacation Rental Certificate TVNC 1356 (TMK 13001083) and TVNC 1357 (TMK 13001094) filed 1/14/15.

Mr. Dahilig: Item J, General Business Matters. 1. Petition to Appeal the Decision of the Planning Director by Ian and Anna Cronshaw concerning Transient Vacation Rental Certificate TVNC 1356 at TMK 13001083 and TVNC 1357 TMK 13001094 filed 1/14/15. The Department would recommend receiving this petition and referring the matter to a hearings officer for receipt of evidence, swearing of witnesses, handling motions, and providing the Commission a proposed decision and order by which to take action.

Chair Mahoney: Chair will entertain a motion.

Mr. Abrams: Move to refer this matter to a hearings officer.

Mr. Dahilig: And authorize the hearings officer to receive evidence, handle motions, swearing witnesses, and provide a proposed decision order of findings and facts for the Commission's entertainment.

Mr. Abrams: Yes, so authorize receiving evidence, handling motions, and report back to the Commission.

Ms. Mendonca: I second.

Chair Mahoney: Okay, it's been moved and seconded. Any discussion? Hearing none. All in favor? (Unanimous voice vote) Opposed? (None) Motion carried.

On the motion made by Commissioner Abrams and seconded by Commissioner Mendonca to refer to a hearings officer and authorize the hearings officer to receive evidence, handle motions, and report back to the Commission, the motion carried by unanimous voice vote.

Time Extension request regarding Special Management Area Use Permit SMA(U)-2008-15 to complete the project, Tax Map Key 5-8-006: 045, Wainiha, Kaua'i = Daniel & Linda Rohan.

Mr. Dahilig: Thank you, Mr. Chair. We are now on Item J.2., Time Extension request regarding Special Management Area Use Permit SMA(U)-2008-15 to complete the project at Tax Map Key 5-8-006, parcel 45 in Wainiha, Kaua'i. Daniel and Linda Rohan are the applicants and Dale Cua is our planner on this matter.

Staff Planner Dale Cua: Thank you, Mr. Chair and members of the Commission. At this time, I'll just briefly go through the Director's Report regarding this time extension request. For the background, the subject permit involves the construction of an additional dwelling unit for a parcel that's located in Wainiha. It's along the makai side of the highway at the intersection with Ananalua Road. The property is identified as Tax Map Key 5-8-006, parcel 45. The proposal involves the construction of a residence featuring two (2) bedrooms, a living dining room, and two (2) bathrooms; a total square footage of approximately 1,568 square feet. As proposed, the residence will be elevated approximately 16 feet to meet flood construction requirements and the SMA Permit approval was originally granted by the Planning Commission on April 8, 2014. What you have before you is a time extension request. In addition to the Director's Report, the Applicant has also submitted a status report regarding the construction of this additional dwelling unit. As noted, the first extension took roughly about four (4) months to schedule before the Planning Commission. The Department has evaluated the Applicant's request and we are recommending to approve the extension request by amending Condition No. 10, which is noted in the Director's Report. And that concludes the Director's Report at this time.

Chair Mahoney: Is the Applicant present?

Ms. Mendonca: Can I ask the Planner a question please?

Chair Mahoney: Okay, you can.

Ms. Mendonca: Dale, I have a question. Based on the report, it seems like the Applicant had difficulty getting forward because of some problems that the Department had, and there is a sentence here in this report that says that should there be any changes, they need to comply down the road.

Mr. Cua: Correct.

Ms. Mendonca: Could they not be grandfathered? Because it's not their fault that they got set back.

Mr. Cua: Right. I think part of the challenges was that the condition had specific timelines and specific dates that they needed to perform by. So essentially due to circumstances beyond their control, they're actually running out of time and I think that's the purpose of this request, is to give them additional time to complete the project.

Ms. Mendonca: Sure. Yeah, but I'm saying it's in this evaluation that if there are any changes...

Mr. Cua: Oh, as far as to the proposal itself?

Ms. Mendonca: Yeah, like it says in there, ordinance and regulations that have been implemented may become applicable to the project. Because they're set back, it seems like they lost ten (10) months and it was beyond their control, so should they not be grandfathered?

Mr. Cua: Yes, they are.

Ms. Mendonca: Okay, that's all I need. Thank you.

Chair Mahoney: Any other questions for the Planner? (None) Is the Applicant present?

Mr. Keawe: So the request is for one (1) year? Is that it?

Mr. Cua: It is to give them additional time to complete the project and their deadline date would be June 30, 2016.

Mr. Keawe: 2016. So just a little over a year?

Mr. Cua: Yes.

Ms. Robeson: Barbara Robeson for the record. The Applicant was here earlier, so I don't know what happened. She didn't come back, but if you...you might want to defer it. Thank you very much.

Mr. Dahilig: I was going to recommend, Mr. Chair, because we have nothing for the record to ascertain whether or not she consents to the changes or has objections to the changes.

Chair Mahoney: One quick look out there.

Mr. Dahilig: Maybe Dale, if you could make three (3) calls for Linda or Daniel Rohan outside.

Mr. Abrams: Could we defer to the end of the meeting and then see if she comes in? Because I'd like to (inaudible).

Mr. Dahilig: Mr. Chair, given that three (3) calls were made for the Applicant and there was no response, I ask that the Commission defer this matter to the end of the agenda.

Chair Mahoney: Chair will entertain a motion.

Ms. Mendonca: I so move.

Chair Mahoney: It's been moved.

Mr. Abrams: Second.

Chair Mahoney: Moved and seconded to defer. Any discussion? Hearing none. All in favor? (Unanimous voice vote) Motion carried to defer.

On the motion made by Commissioner Mendonca and seconded by Commissioner Abrams to defer this matter to the end of the agenda, the motion carried by unanimous voice vote.

NEW BUSINESS

Class IV Zoning Permit Z-IV-2015-13, Use Permit U-2015-12, Special Permit SP-2015-3 to operate a resource recovery facility for green waste, construction & bulky materials, on a parcel situated along the mauka side of Kaumuali'i Highway in Kekaha, approx. 0.85 mile inland and 1 mile west of Kekaha Gardens Subdivision, further identified as Tax Map Key (4) 1-2-002: 008, and containing a land area of 12.34 acres = Shredco, LLC.

Mr. Dahilig: Thank you, Mr. Chair. We are now back to Class IV Zoning Permit Z-IV-2015-13, Use Permit U-2015-12, and Special Permit SP-2015-3. This is the green waste construction and bulky materials, and recovery facility. TMK (4) 1-2-002, parcel 8. Shredco is the applicant. As a reminder to the Commission, the agency hearing was continued for the next

meeting, but Jody's ready to start the proceedings by presenting the Department's preliminary findings.

Staff Planner Jody Galinato: Good Afternoon Chair, members of the Commission. I'll read the Director's report as fast as I can for you. The action required is a special permit as the proposed use is not a permitted use within the State agricultural land use district. A use permit is required as the proposed use is not generally permitted within the ag district. A Class IV Zoning Permit is a procedural requirement when applying for a use permit within the ag district.

The applicant is proposing to use the property to (1) receive and process agricultural green waste from the Hanapēpē and Kekaha refuge transfer stations, as well as from various individual customers, primarily from the south and west sides of the island; and (2) process, grinding and shredding, construction demolition debris, concrete from various individual customers throughout the island, and bulky materials from the Kekaha landfill.

Onsite parking will be provided for employees and for customers who arrive to pick up compost. Deliveries to and pick up by customers will occur Monday through Friday during daylight hours. The Applicant will also have a 4,000 gallon water truck on site for dust control. The onsite improvements consist of a portable office building, four (4) shipping containers for storage, tenting to provide shelter for employees, and portable restroom facilities. Large capacity scale grinders and shredders will be stored on site; along with excavators, loaders, and trucks. All these improvements are capable of being removed as they are not permanent fixtures. A revised site plan is attached as Exhibit B. No permanent staff will be assigned to man the office trailer as principal office operations of the applicant are at the Puhi Industrial Park Office.

The Applicant would like to designate its operation after securing all necessary permits for its activities, as Shredco's multi-material recycling facility. A complete description of the proposed operation is included in the application. The Applicant has satisfied the public hearing notice requirements. Regarding the findings, the property information, the subject property is located along the mauka side of Kaumuali'i Highway in Kekaha, approximately 0.85 miles inland and 1 mile west of Kekaha Gardens Subdivision. The property is zoned agricultural district, as well as its surrounding properties. Regarding the site information and characteristics, the property is relatively flat and is fallow sugarcane land. The land has been fallow for approximately fourteen (14) years. There's a small pond on the property that the Applicants would like to backfill.

In regards to the surroundings, the parcel and the surrounding lands were previously utilized for sugarcane. The neighboring lands are currently leased to Sunrise Capital Inc.; Syngenta Seeds; BASF Plant Science, LLC; and Pioneer Hybrid International. Across the old government main road are lands owned by Hawaiian Homelands and the U.S. Government. The soils within the Nohili series described as poorly drained soils on coastal plains. The soil rating for this land is "A". This type of soil has typically been used for irrigated sugarcane. The subject property is located within Flood Zone X, which is an area outside of the 500 year flood zone.

There are no existing permits on the property; however, during the site visit on March 2nd, it was noted that an office trailer had been placed on the property. The Applicant will need to apply for an after the fact zoning permit to allow the trailer. Additionally, the Applicant will need to

obtain all necessary permits regarding the establishment of the pond and the proposed backfilling. All other proposed structures will be required to submit for proper permits prior to placing it on the site.

The main access is by way of an existing unimproved government roadway that connects to Kekaha Road and is accessed through a gate. There is an alternate access from Kaumuali'i Highway.

The Applicant should resolve and comply with all agency requirements as recommended in the permit application review. Regarding our preliminary evaluation, in evaluating the proposed development to allow multi-material recycling center, the following aspects should be considered. Regarding the special permit pursuant to Chapter 205 of the Hawai'i Revised Statutes and its rules and practice and procedures, the Planning Commission may approve a special permit under such protective restrictions as may be deemed necessary if it finds that the proposed use is an unusual and reasonable use of the land situated within the State land use agricultural district and that the use would promote the effectiveness and objectives of Chapter 205 HRS.

The Planning Commission shall consider the following guidelines in determining unusual and reasonable use: (1) such use shall not be contrary to the objectives sought by...to be accomplished by Chapters 205 and 205a HRS and the rules of the land commission. An intent of the State law is to assure that agricultural lands with a high capacity for intense cultivation be afforded the highest protection of agricultural purposes and that the uses allowed on other agricultural lands be compatible with such agricultural uses. It is noted that although there are intensive agricultural operations adjacent to the project site, this facility only affects the 12 acre site and is a separate parcel from the larger agricultural operations. It should be noted that the green waste operation is considered an agricultural use and approximately 2.4 acres will be allocated for this use. (2) The desired use would not adversely affect the surrounding property. Given the remote location of the site, it should not adversely affect the surrounding property as it is approximately 0.85 miles inland of Kaumuali'i Highway and 1 mile west of Kekaha Gardens Subdivision. An earth and berm, with a liner covering the berm, will be constructed along the fence line to retain runoff during rain events. The Applicant will also implement best management practices to control dust. Since this area was previously under agricultural cultivation and is now fallow, there will be no irrevocable loss to natural, scenic, cultural, historical, or archaeological resources or sites. As such, the use should not significantly affect the surrounding uses. (3) The use would not reasonably burden public agencies to provide roads and streets, sewers, water, drainage, school improvements, and police and fire protection. The nature of the applicant's operation is such that the need for public agencies to provide services does not really exist. There is an existing, unimproved little traveled roadway servicing the property. This business has no sewer/water demands and is not anticipated to experience drainage issues as given that a lined earth and berm would be placed to prevent potential flooding to the adjoining properties. And its isolation from developed occupied properties will limit or negate any need for schools, police, or fire protection. (4) Unusual conditions and needs have arisen since the district boundaries and rules were established. Since the Kekaha landfill is approaching its capacity, there's a growing need to divert bulky materials and green waste materials until another landfill site is established. This facility, as previously noted, serves as an

alternative by converting green waste, bulky materials, and concrete and asphalt into either reusable commodities or to reduce the size of the materials entering the landfill. Due to population growth, diverting green waste, concrete, and asphalt rubble, if it can be recycled and reused, will certainly contribute substantially to reducing the amount of waste deposited in the landfill. Presently, there are no lands in the urban industrial zoning districts far from occupied areas that are large enough to accommodate the applicant's need. Additionally, there is a developing trend to foster and promote recycling and reuse. This recycling operation is consistent with the State of Hawai'i's integrated solid waste management act, the County's solid waste goals, and the Hawai'i 2000 plan for integrated solid waste management. (5) The land, which the use is sought, is unsuited for uses permitted in the district. Although the subject property contains Class A soils, it is currently fallow and no longer suitable for intensive agricultural based on previous activities. No permanent structures are proposed and therefore, they are capable of being relocated. Additionally, approximately 2.4 acres will be used for agricultural purpose in conjunction with this development. In regards to the use permit, pursuant to Article 3 of the CZO, Chapter 8 of the Kaua'i County Code, the purpose of the use permit procedure is to share proper integration into the Community of uses which may be suitable only in specific locations in a district or under certain conditions if the uses designated, arranged, or conducted in a particular manner and to prohibit the uses if proper integration cannot be assured.

Mr. Dahilig: Hey Jody, maybe you could just summarize the use permit section and then maybe just reach the conclusion.

Ms. Galinato: Gladly. The use permit may be granted only if the Planning Commission finds that the use meets the following criteria; the use must be a compatible use, the use must not be detrimental to persons or property in the area, the use must not cause substantial environmental consequences, and the use must not be inconsistent with the intent of the CZO. The operations as proposed should not significantly impact neighboring properties provided the mitigated measures are properly addressed. This includes, but is not limited to, to continuously watering down the stockpile areas, as well as the dirt roadways leading up to the project site, and possibly constructing dust fences and/or screens in landscaping that is of adequate height along the property boundaries. Furthermore, the Applicant should be responsible for the maintenance of this site in a clean and orderly manner. Solid waste such as incidental rubbish in other ways shall not be permitted to accumulate on site. Disposal of such materials shall be in compliance with all applicable State Department of Health rules and regulations. There's provisions for lighting, if that's needed, but I don't believe they have any electricity out there. And best management practices in sustainability, and I'll hold off for the conclusion.

Chair Mahoney: Is the applicant present?

Lorna Nishimitsu: For the record, Lorna Nishimitsu, attorney for Shredco. Unfortunately, I sent the Kaeo's, told them it would be safe for them to go and get lunch. Shredco is a small LLC owned by Chanelle and Danford Kaeo. They have a sub-license from Sunrise Capital, which is a tenant of ADC, for 15 acres to apply green waste to their property, which is a small part of a parcel that is about 13,000 acres in size under the control of ADC and licensed to a number of tenants, as indicated by Jody, including Syngenta and other tenants. This

13,000 acre parcel entirely surrounds the subject property, which is 12 acres in size and its only access is that old government road that Mr. Munechika was testifying about.

The problem for Danford, the Kaeo's, is that the sub-license is for a short term; only for three (3) year periods of time, subject to renewal with the consent of Sunrise Capital, with the consent of ADC, which doesn't give Shredco the ability to be able to, you know...comfortably bid for County contracts to take the green waste and other materials from the landfills to process, so that they can reduce the volume of trash that's going into the landfills.

Right now, Shredco has a contract to take the green waste from Hanapēpē and Kekaha. They process it and they lay it out on that 15 acre leased area and after it becomes compost, the tenants of ADC have Shredco going out and applying the compost to the seed fields, so these materials don't go back to the landfill. If there's excess materials, the green waste goes back to the landfills where customers, members of the public, can go and pick up free materials. All other commercial use of the green waste is delivered by Shredco vehicles, so you're not going to have a whole bunch of people driving up and down the road to go get green waste, which is basically free, because it's County green waste. Shredco would like to be able to get contracts to process household goods, concrete, reduce those. And the concrete right now would be used to surface ADC ag roads, which is what Danford is doing now, but not at the 12 acre site because tenants of ADC are required to maintain the roadways. So these things that are being reduced either get reused, or if not capable of being reused, have to be delivered by Shredco vehicles back to the landfill after reduction so that they can be placed in the landfill. All ground materials, the household materials like furniture, couches, mattresses, are brought in by container, ground down, placed back in the container, and then eventually taken back to the landfill. So they don't just sit on the land waiting for the next big rain to leach whatever contaminants ADC believes might be contained within household furnishings, and then there by leach into adjoining properties.

It's correct, Shredco did ask ADC to expand the use of the licensed 15 acres by processing these materials, but was told materials such as household items and concrete, were told that it is not an agricultural use, so ADC wasn't going to expand the use of its ag lands. I had a discussion with County Staff and the KAA's council about whether or not creating compost is an agricultural use. The Planning Department seems to believe that it is an acceptable agricultural use, but if you look closely at Chapter 205a Hawai'i Revised Statutes, creating compost from residential green waste, which is the green waste that Shredco is processing, it's not clear whether that's a permissible agricultural use, but it is a use that people can get behind because it's good for the island. Shredco knows that the other uses, which is the reduction of household goods, concrete, are not agricultural uses, which is why we are before you to propose the use of their own lands, not ADC's lands, through a special permit and a use permit.

Like I said, the materials that get stripped down, shredded, whatever, reduced in volume, are brought there by Shredco vehicles, which incidentally already have the run of all of ADC's lands because they haul for the corn companies, they deliver green waste to the seed companies and the other tenants, and they refresh their roads with crushed concrete. So they're already driving all over those roads; they're already driving over the road that is identified as the old government road with those vehicles. All of these uses are things that we know that the County agencies can

get behind, subject to, of course, to reasonable requirements, such as we were required to have the State Historic Preservation Division assess the archaeological value of the property. The unfortunate thing is that Mary Jane Naone was only able, because of her schedule, to go to the site yesterday, but thankfully sent the letter to the Planning Department confirming that there are no historical sites on the property that would be impacted.

We are also looking to go into contract with SSFM to prepare a traffic analysis about what impacts there would be from the use of the old government road. It's not really clear what branch of government takes possession of that road, if it's State or County. But the number of vehicles that Shredco will have traversing the property, it's only going to be periodic in nature, they're projecting three (3) to four (4) truckloads per week of bulky materials and that includes beds, furniture, somebody's piano, whatever it might be. For green waste, four (4) days per month, eight (8) hour days because that's to bring the green waste, shred it, and then move it off site to spread on the 15 acres. For concrete products, they're projecting one (1) to two (2) loads per week, all hauled by Shredco vehicles, a carrying capacity of which is going to vary. If it's green waste, it's a 30 cubic yard truck. If it's the heavier materials, like the concrete, it's going to be 15 to 20 cubic yards that would be carried, so they are sensitive to the need to ensure that the roads are capable of supporting the weight of their vehicles. This level of traffic doesn't sound like it will overtax Kekaha Road, but the final determination will be made by SSFM and Public Works when the analysis is completed.

The Applicant does not believe that shredding household products or grinding concrete would cross-contaminate the ADC lands. As indicated, the shredding of the household products, which would probably contain maybe pet dander, dust, etc., will be placed back in bins for transport back to the landfill. They're not going to be left to sit on the property and be stockpiled for days on end; and probably are not going to create anymore cross-contamination than exists from when fields get plowed, when herbicides or pesticides are applied. In Shredco's case, there will be a water wagon there to keep dust down.

The uses which we indicated are not truly agricultural would be a legitimate reason not to allow ADC lands to be used for such purposes, but ADC does allow its lands to be used for non-agricultural purposes. There is a tenant currently that has a license to do rock crushing, and that tenant's vehicles are allowed to go over the old government road, are allowed over the ADC lands, and those vehicles that do the rock crushing and transport the equipment are heavier than Shredco's vehicles. We're kind of concerned about the fact that statements were made about impacts by Shredco without factoring in current impacts by other users of the road.

The gate to the old government road is present and is locked at, I believe, 6 p.m. or 7 p.m. every night, but during the day Shredco...the Kaeo's have been able to go up and down that road without impediment because the gate gets left open. We understand the concerns about unimpeded access. There are tenant fields there, just as there is our client's property there that you don't want trespassing on. There is no security guard that opens and locks the gate each time that a vehicle enters and leaves.

So for those reasons, we would ask that this Commission factually consider what the impacts are, weigh the benefits of the proposed use against the claimed negative impacts, and favorably allow

our client to engage in the operations that are proposed. We understand there's no guarantee that Public Works, Solid Waste Management Division is going to let...give contracts to our client, but without a permanent site at which it can commit to bring the product for processing, it won't even be able to enter the game. And for those reasons, we ask for your support.

Chair Mahoney: Thank you. Are there any questions for the applicant?

Mr. Keawe: Can you tell me a little bit about...I think it's a good project that you're trying to recycle and get this back in the environment. Tell me a little about the concrete, the products, that are those to be crushed, and what size, and how will they be used. You said filling in roads, and what about the other, which is pavement chunks or whatever.

Ms. Nishimitsu: I was afraid there would be technical questions like this. I don't know the side of, you know, if it was rock it would be called aggregate. I don't know the size it would be reduced to, but it would have to be of a size that can be reused for like graveling. Comparison would be for graveling the roadways for the agricultural vehicles; some of which are small pickups of course, but some of which are bigger trucks because they're Shredco's trucks that have to do a lot of the transport within the ADC fields; would have to safely allow those vehicles to travel without undermining the subsurface. If you need to know the aggregate size, I can get it for you though.

Mr. Keawe: Yeah, just, I mean the uses. And the other is, you mentioned that the household items will be crushed or shredded. The other part of that is, what do they look like when they're done because they're going to go back into the landfill. I assume you want to take bulky items and compact them so that it takes up less space.

Ms. Nishimitsu: Well, the machines that they have is an (inaudible) tub grinder and it shreds the wood, mattresses, etc. to a size where they can be more readily compacted in the landfill because everything gets compacted there. If it's not shredded, the vehicles or the tractors that drive over it, will be doing the reduction, but apparently the extent of reduction by doing it in that fashion doesn't compact it sufficiently, so that the County feels that it can get more life out of this landfill. We all know that the County's been looking for an alternate site for many years, has had to get extensions from the Department of Health to keep Kekaha operational. Therefore, there was a letter of support from your Solid Waste Division, although a clarification that there is no commitment to Shredco, but they support having an operations such as this, to which ultimately a contract can be let and if it's not Shredco there's also Pacific Concrete and Coring, which has similar land use permits on ag lands to engage in this kind of activity; not necessarily for the County because they take construction debris material, and reuse them in other projects. So I will ask my client maybe if they could provide photographs or samples.

Mr. Keawe: Just for information sake, I think it would be helpful. And one last question has to do with security. We had testimony earlier about locks being broken or access, and you had mentioned that during the process, a security guard would open and close the gate.

Ms. Nishimitsu: Well that...I gather that from Mr. Munechika's testimony that they have to pay a security guard to lock the gate, open it up, when people go in and out; and there's also

hunter access. My client has explained that because they've been to the site numerous times before they purchased it, and they go and check on their property, the gate has never been locked during the daytime hours. He does have a key to access the gate, and he is aware that in the evening time there is a security guard that does lock the gate, so my client does have access because he's effectively landlocked and cannot be prevented from having access to his property. But as far as how KAA schedules what it's security has to do, opening, closing, when it's opened, when it's locked, I can't tell you, and I'm not sure if Mr. Kaeo can tell you either.

Mr. Keawe: Okay, because that's controlled by someone else.

Ms. Nishimitsu: Yes. Oh and incidentally, KAA did tell me that they didn't want another member, meaning Shredco, to be a member of that Kekaha Agricultural Association because they basically deal with the tenant farmers out at ADC, so I guess Shredco's operations wouldn't quite fit in with what their stated purpose is.

Chair Mahoney: Any further questions?

Ms. Mendonca: I have one. Lorna, there was a concern that was brought up by the Planner for an after fact zoning permit to allow the trailer. Is that presumptuous that they put up a trailer before it even got to this level?

Ms. Nishimitsu: I don't think...well, I wasn't aware of it when we applied, and I don't think they understood that just parking a trailer there that's not being used would have required a zoning permit. And I did speak with Jody about that, it's like...I cannot...because my question was, can I not just store something on the property, and her response was that a zoning permit would be required; a Class I Zoning Permit would be required, even if that trailer is not being used.

Ms. Mendonca: The purpose of the trailer is for?

Ms. Nishimitsu: Eventually, if we got the permits, the trailer would be used as the office.

Ms. Mendonca: But isn't that what they're saying, they do not need an office?

Ms. Nishimitsu: No, well, it's a temporary office as a place where workers can go if they're onsite so that they don't have to stay in the sun if they're not running the machinery; so they're going to have a place for the employees and the Kaeo's if they're on site, but it's not going to be connected to electricity, it's not going to be connected to domestic water. I think the estimate from Department of Water was it would cost \$1.4 million to run...do a mainline extension, if they ever wanted to connect to water, so that's why that facility doesn't get staffed unless something needs to be delivered, shredded, ground, whatever, and then moved off site again.

Ms. Mendonca: What are the possibilities of it ever catching on fire?

Ms. Nishimitsu: The trailer?

Ms. Mendonca: Or any of these? In the processing plant. If you don't have water, what are the dangers or potentials in processing? There seems to be a lot of shredding, and its equipment, and in an area that has no availability. Just my curiosity in terms of what happens if there's no water in that area.

Ms. Nishimitsu: Then that I couldn't tell you. The office trailer catching fire without fuel or any electrical connection is probably non-existent unless somebody's smoking.

Ms. Mendonca: But the shredding. Like the shredding.

Ms. Nishimitsu: The equipment, like a vehicle catching on fire? I don't know what the odds are of something like that happening, and if it happens, what the ideal...okay, Mr. Kao is a fireman, so he might be able to explain better to you, whether a vehicular fire of that nature, how it would be fought if there's no water connection.

Chair Mahoney: Any further questions?

Ms. Mendonca: There is a part here that says there's two (2) acres that would be used for agricultural purpose and what is that two (2) acre agriculture?

Ms. Nishimitsu: The Planning Department's position is that the processing of green waste to create compost and the two (2) acre area allocated for that use constitutes an agricultural use. That's a difference of philosophy, like I said. ADC's position was creating compost on its 15 acre licensed property is an agricultural use.

Ms. Mendonca: Was there any public notice to the Kekaha area, these people? Was there like a meeting of any kind that was held to notify?

Ms. Nishimitsu: No, there were no community meetings.

Ms. Mendonca: And was there any direct conversation with the County regarding perhaps partnering with the landfill? Because it seems that if you get it closer to a landfill, doesn't necessarily mean Kekaha because they're already faced with having to do something about that situation. But I'm saying, was there any conversation with the County saying whatever areas outside of this particular 12 acres, should the County find another landfill area that Shredco would be a part of it, which would make sense, it's closer.

Ms. Nishimitsu: If the question is whether there are County lands available for Shredco's use...

Ms. Mendonca: No, no. I'm saying, I like the idea, don't misunderstand me. I think the idea...we all agree that recycling is in great need because landfills are getting full, but I'm saying the fact that that has been a hot topic, and it's going to get even hotter because you can fill the land only so much. But Shredco's philosophy sounds great, and it sounds like it's the thing of

the future, but did they sit down with the County and talk to them about being a partner in the future plans for another landfill in the Kekaha area?

Ms. Nishimitsu: Not to my knowledge, and I'm not convinced that the County is looking at the Kekaha area as an alternate landfill site because...I've seen nothing in the news about that. But certainly Shredco, being a very small company as it is, wouldn't have presumed to tell the County, we're the new landfill if any should be sited. They're just looking at so long as Hanapēpē and Kekaha are operational, and the County's Solid Waste Division is looking at getting the green waste and other materials out of there, reduced in size, and if all else fails, returned back to the landfill, that's what Shredco has been looking at to try and be proactive in being able to get work.

Ms. Mendonca: So the County pays for this? Or does the individual homeowners, people pay for this service?

Ms. Nishimitsu: The County pays a contractor to take goods from the landfill, the transfer stations, to reduce the green waste that is composted. The County doesn't really care apparently. It can be used by the operator as is being used right now for the ADC lands, whatever isn't being used by ADC or other customers gets delivered back to the landfill for the residential customer; for example, if I needed compost, I can just go to the transfer station and pick it up for free. But if I want 30 cubic yards of compost delivered by Danford to some other site, then they're going to have to pay Shredco for the delivery.

Mr. Keawe: The product is free, but the delivery costs.

Ms. Nishimitsu: Yeah.

Ms. Mendonca: So the public can go up to Shredco's area, if this is approved, and pick up there?

Ms. Nishimitsu: Well it's subject to what the Commission decides. I think there's going to be concerns on the part of the public, well maybe ADC, KAA, about a guy in his tiny little pickup truck going up every day, several times a day, to get free compost. It's the volume of traffic. So right now, all transport of green waste is going to be through Shredco's vehicles to control how many cars are using the old government road because right now, we do not have consent from ADC to enter from Kaumuali'i Highway to...I was told and no uncertain terms by ADC, that we would not get consent to leave Kaumuali'i Highway, cross through the ADC farmlands, to hit the 12 acre site for the uses proposed on the 12 acres. Shredco has the right to use those access roads to get to its 15 acre licensed parcel and to perform the services for the tenants, which includes delivery of green waste and spreading it out on the fields, putting crushed rock or concrete on the driveways, but not consent to use that farm road to get to the 12 acre site that Shredco owns.

Chair Mahoney: Okay, no further questions to the applicant?

Mr. Abrams: Yeah, I got a couple. Boy it's amazing that this 12 acre parcel's out in the middle of all of these huge ones and the challenge that is there. So the landowners and co-ops that are around there, if this was just a green waste shredding thing, they would not have a problem with it because they have already been effectively allowing a lease on other lands that they manage.

Ms. Nishimitsu: Well, it's apparently not a problem for KAA or ADC that Shredco is doing green waste on the licensed part of the property. Whether the tenants who are customers of Shredco for green waste hauling, corn, etc. are opposed to the concrete crushing or the furniture, mattress, piano shredding, is unclear because right now ADC, it's landlord has spoken...and I guess KAA has spoken too, that they don't support it because of the concerns about the impacts to its roads, concerns about contaminants. I believe that given the process that the issue of whether there are going to be contaminants is highly remote because it goes back into the bin that brought it there. The kind of contaminants in household furniture, which apparently is untreated lumber, unlike lumber for building, also makes that possibility remote; that what is going to be leaching if the bin of shredded furniture sits out there and there's a heavy rain, what will be leaching into the soil. I don't think that there's going to be the kind of leaching that testimony thinks will be out there, any more than what other people are concerned about, and it's the leaching of chemicals from pesticides or herbicides.

Mr. Abrams: So then, something like Coco Palms demolition, would they be involved with that at all?

Ms. Nishimitsu: Not directly with Shredco. Because Coco Palms has got to pay the tipping fees at the landfill. The County has to determine what materials Shredco's going to have to take out, should it even get the contract which is still an unknown, what gets reduced before delivery back to the landfill.

Mr. Abrams: Much like the green waste then I guess from the other base yards where they're hauling that in and shredding that, and then if it all isn't given away or transported, it eventually would go back to the landfill in a compacted state.

Ms. Nishimitsu: Yes, and the County accepts residential green waste. It doesn't accept commercial green waste, it doesn't accept agricultural green waste, so this green waste comes from your house, mine, our neighbors.

Mr. Abrams: Okay, thank you.

Chair Mahoney: Okay, no further questions.

Mr. Dahilig: So Commissioners, what we'll do is we will...there were concerns that were brought up by the Commissioners. We're taking notes so we'll go ahead and try to itemize those and provide a response back to the Commission at the May meeting when this matter will be taken up again.

Ms. Galinato: Excuse me. I would need the Applicant to waive the 60-day time period.

Ms. Nishimitsu: I guess the question is how much of a waiver does that constitute. Is it open ended?

Ms. Galinato: You said May?

Mr. Dahilig: Yeah because we don't have a meeting...the second meeting in April, so we have the first meeting in May. Does that falls outside the action period?

Ms. Galinato: Yes.

Mr. Dahilig: Okay, so I guess waive...

Ms. Galinato: My sixty (60) days is April 17th.

Mr. Dahilig: Oh, sixty (60) days is April 17th. Okay, so it would be from the 17th through the 12th, I believe. Yeah, 17th through the 12th. Just a waiver from that period.

Ms. Nishimitsu: Yeah, that's fine.

Mr. Dahilig: Okay.

Ms. Nishimitsu: I'm sorry.

Ms. Galinato: Thank you.

Mr. Dahilig: April 17th to May 12th.

Chair Mahoney: So do we need a motion or anything?

Mr. Dahilig: No, the hearing was deferred so (inaudible)

Chair Mahoney: (Inaudible) The applicant agrees and okay, that's it. We can move on. Thank you very much for your testimony.

GENERAL BUSINESS MATTERS (Continued)

Time Extension request regarding Special Management Area Use Permit SMA(U)-2008-15 to complete the project, Tax Map Key 5-8-006: 045, Wainiha, Kaua'i = Daniel & Linda Rohan.

Mr. Dahilig: Mr. Chair, if we could return back to Item J.2. This is the time extension for SMA Use Permit 2008-15. We were able to locate the applicant, so I guess if we pick up where we left off, the Department did his presentation, and we're at the juncture to call up the applicant at this time.

Chair Mahoney: Are the applicants in the house?

Mahina Laughlin: Hi, my name is Mahina Laughlin, and I'm sorry I wasn't here earlier. I had a misunderstanding. So I just want to follow up...thank you, thank you for your time. I appreciate it. I want to follow up, so we started our building in 2011. Everything was fine; we used our life savings to build our whole foundation, all permits in place with the understanding that we were going to take a loan to finish it. Both my parents got cancer, so we weren't able to...she wasn't going to co-sign, so to have our own loan we had to CPR the property and that took longer than expected; a whole year longer. We received our CPR in December. We came to your Commission last July to extend two (2) years with the misunderstanding that it was the extension from the beginning of the permit issued, or 2013. We thought it was extension two (2) years from last July. Your paper is the last paper for our broker to receive our loan and finish our building. So we're just asking if you could extend one (1) year, and that's more than enough time to finish all building.

Mr. Dahilig: You've read the Director's Report?

Ms. Laughlin: Yes.

Mr. Dahilig: And you have no objections to it?

Ms. Laughlin: No.

Ms. Mendonca: Are you certain you can do it by June 2016? Is that more than enough time? Given the circumstances you went through, are you sure this is enough time?

Ms. Laughlin: Well, I don't want to push my luck. If you're going to give me more time, I would love it. (Laughter in the background)

Ms. Mendonca: I understand. I know you're working very hard, and given the Planner's report, I think all of us here are very sympathetic that you've given your best effort, so rather than for you to come back again because of some other unforeseen problem, is there a condition that we can afford to give her a little bit more time than this? Because it's right around the corner. I don't care what you think; it's just right around the corner.

Mr. Cua: So the answer to your response is, currently as proposed by the Department, we are recommending to amend Condition No. 10 of the SMA Permit where the extension period...the deadline for the extension period would be June 30, 2016. If you feel that additional time is warranted, you are welcome to amend the recommendation to a later date.

Ms. Mendonca: Could we give her two (2) years?

Mr. Cua: So if that is the case, then the date would be amended to June 30, 2017.

Mr. Abrams: Chair. Do we have statutory limitations on that SMA Permit?

Mr. Dahilig: No, along as there's one prescribed in the permit then it overrides what the general two (2) year condition is.

Ms. Mendonca: And I think it's only fair, in this discussion with the rest of the Commissioners, because part of it was part of the problems in getting things done by the Department, not following up, I believe, on some things. And her request for one year is...she's accepting this, but I think just to be safe, giving her two (2) years and that should take care of everything in my opinion.

I make a motion that we change this to June 30, 2017.

Mr. Abrams: Second.

Chair Mahoney: It's been moved and seconded. Any discussion on the matter? Hearing none. All in favor? (Unanimous voice vote) Opposed? (None) Motion carries.

Ms. Laughlin: Thank you very much. I appreciate your time.

Chair Mahoney: Glad you came back.

Ms. Mendonca: Good luck.

On the motion made by Commissioner Mendonca and seconded by Commissioner Abrams to amend the recommended deadline to June 30, 2017, the motion carried by unanimous voice vote.

HEARINGS AND PUBLIC COMMENT (Continued)

Zoning Amendment ZA-2015-4: A bill for an ordinance amending Chapter 8, Kaua'i County Code 1987, as amended, to establish a process to permit Homestays in the Commercial Districts, Resort Zoning Districts and Residential Zoning Districts = County of Kaua'i, Department of Planning.

Mr. Dahilig: Thank you, Mr. Chair. We are...I guess...we are eagerly anticipating the delivery of lunch. (Laughter in the background) So may I suggest if we continue to keep going until lunch appears? I guess we'll handle Continued Public Hearing Zoning Amendment ZA-2015-4, a bill for an ordinance amending Chapter 8, Kaua'i County Code 1987, to establish a permit process for homestays in the district. Our Deputy Director is handling this matter and he has a report for the Commission.

Deputy Planning Director Hull: Good Afternoon, Chair, members of the Commission. Well, I'll just give the lay of the land essentially for this particular agenda item. To give some background history on the zoning amendment for the homestay ordinance, proposed homestay ordinance, back in January the Department submitted...February the Department submitted to

this body a very substantive draft ordinance to lay out specific standards and parameters under which homestays could be processed and permitted, or at least reviewed either by the Department or by this body, depending on the particular proposal. Like I said, it was a very substantive draft ordinance and the Department still stands by the merits of that draft ordinance. Since then, the Department and the County have essentially come into an enforcement ordeal that has necessity to us amending the draft ordinance substantially to deal with the issue of enforcement essentially. And to give some background on it, for the past two (2) years now the Department has, in response to community concerns, Council concerns, and overall land use, has ramped up its enforcement efforts to deal with the issue of Transient Vacation Rentals; in particular, illegal Transient Vacation Rentals. In investigating these matters, the Department has shut down several illegal transient vacation operations. But in the process of doing that, it appears that some homestay operations were also wrapped up into the enforcement actions. Now, those actual homestay operations, while they are different from Transient Vacation Rental operations, they are also in violation of the County Code if they have not secured their proper permits.

I'm going to pause for a second here and see if there's actually going to be a break because...we're going to go into some lengthy discussions and...

Chair Mahoney: Okay, well maybe at this juncture, because it is going to be lengthy, that we pause for a lunch break. 1:45 we'll return. Thank you.

The Commission recessed for lunch at 12:56 p.m.

The Commission reconvened at 1:45 p.m.

Chair Mahoney: I'll call the meeting back to order and continue with our Planner.

Mr. Hull: Good afternoon Chair and members of the Commission. We left off in discussion of the enforcement scenarios the department was facing under transient accommodations outside the resort and VDA districts. For the department, in looking at overall bed and breakfasts and comparing them to transient vacation rentals, because while they are similar in nature that they are providing transient accommodations, they are vastly different when it comes to land use. The primary part of this is essentially that a single family transient rental is a dwelling in which there is no owner present. Transient individuals rent the house for short term and vacation and stay in the house versus in a homestay operation it is also a single family dwelling and the owner is present at the operation. Having that owner there has proven to be (no sound due to technical difficulty) apply for homestays when in fact they, the owners of the homestays, have no intention of actually residing on premises when the transients are there and acting as that self-regulating mechanism.

So the applications are coming in, there is a loop hole, we are admitting that, but it needs to be fixed. In the process of serving out a lot of enforcement and cease and desist notices to illegal transient vacation operations, those individuals have no remedy to essentially get that TVR compliance. It is illegal to have those outside of the VDA if they don't have a nonconforming use certificate. So what a lot of these operators are now doing is coming to the

Planning Department and proposing, under a homestay, these pseudo TVR operations. And quite frankly while they are allowed to do it, the department takes the position that that was not the intent of the homestay provisions that are currently in the Kauai County Code. So essentially we need to tighten that definition up to specifically define homestays as operations in which the homeowner himself is residing on premises and that is the definition that we provided to you in the draft amendment.

Going back to the original bill that the department submitted to this body, the department still stands by the merits of that bill and we know that there needs to be a lot of debate and discussion on the proposals in the draft ordinance, debate and discussion are necessary. In the democratic process we need to go through these things and have discussion with the community and a lot of the testimony you received today was pertaining to that original draft ordinance. A lot of what was discussed today has definite merits and I can say the department agrees with. But the situation we are facing right now with a flood of pseudo TVRs racing in and trying to exploit this loop hole, the department has determined that we need to essentially close the spigot and at least get that definition on the books. Right now we are recommending that we tighten this definition and also put an interim zoning measure which is a limit on the amount of homestay applications this body can review, so that we can tighten up the definition, close the spigot on these pseudo TVRs coming in, and then go back and actually pick up where we left off with the original draft proposal. That is ultimately what is before this body today.

Mr. Dahilig: If I could just add to that. Kaaina has been running this issue point on this for the department and he has done a yeoman's effort to try to sort through the mess here. I think what the bottom line is, is that we want to reiterate both to the Commission and to the public that we want to have a frank and very in depth discussion concerning how we should be regulating homestays. You have heard the discussions concerning things like signage, when they should be operating, how many rooms should be there. All these things are valid items that the Commission should have public feedback on. Where we are getting pressed at this juncture is like Kaaina said, we have essentially TVRs in sheep's clothing applying as homestays. It candidly does a disservice to those individuals who have made a very innocent mistake of the law versus those that are purposely trying to evade the law. Unfortunately the law is black and white and the law needs to be applied fairly across the board.

So what we want to do is create that venue to not be under a time pressure to have the discussion on how homestays can be compatible in our communities and define a clear permitting structure for it, define the enforceable parameters for it and allow that discussion to ensue. Right now our primary concern is the fact that the Commission is the approving body for use permits and Kaaina, we have thirty four now I believe?

Mr. Hull: It is at thirty four, I believe.

Mr. Dahilig: We have thirty four use permits before this body and those are all pending homestay applications. In a normal year the Planning Commission only handles twenty or so use permits and that is for a variety of things. So you can see our concern and what we hope can happen is that by having this interim measure in place, a process that will be less cumbersome, less expensive, and also very clear can actually come out in the discussion in the second bill.

Everybody can be on the same playing field so that we know what the rules of engagement are, we can have discussions about things like where they should be located, we can have discussions about things like should there be cap, how many bedrooms should be allowed. All those things have to be discussed for a comprehensive bill to be okay with the whole community. But right now we just don't have the luxury of having that discussion ensue both here at the Commission level and at the Council level while we are having this tsunami of use permits effect this volunteer body.

What Kaaina has been able to craft very carefully is two items that he thinks will help give us the time to actually have the discussion and that is the definition change in the interim, and then we will come to the Commission with a bill, which is Exhibit D, which has all the items that everybody else has been talking about in the public and we will reintroduce that as a second measure so we can have something quickly following behind the interim measure so that we can have that homestay policy implemented.

Mr. Hull: I would like to add one last thing to the Director's comment, that number is thirty three to thirty four and is cueing up. Just on Friday that number was at twenty seven, a few days before it was at twenty two. Like I said, do we need to discuss this, indeed we do but right now that number grows every day and the longer we take to get this up to the Council, hopefully for their action, the bigger that number is going to get. And when Mike says there are thirty four homestay applications, they are saying they are homestays, there are several of them that quite frankly and we will be brining those to this Commission and if they do not meet this definition which we can have that self-regulating mechanism with the owner on site, the department will be recommending denial. At the end of the day it is up this body but the department holds firmly to the fact that if you are not the owner being on site to self-regulate your own transient tenant, that could serve as a significant impact on your surrounding community. A corner that the department and the County have essentially been backed into but it does require some urgent action and that is what we are recommending, thank you.

Chair Mahoney: Any questions for the planner?

Mr. Abrams: Kaaina, Exhibit A which is the two page ordinance you want our input and hopefully approved and sent up to Council would deal with the situation. In this it calls for no more than ten applications and so it appears to me that there are a lot more out there and most of the ones I have heard today seem to be legitimate. Is this just sort of checks and balances for the immediate thing, because at this point right now I think you could be...well isn't it at that point you have roughly three hundred real property tax issues with people filling out forms and going through the process of trying to determine whether or not they are really illegal or perhaps something that hadn't gotten a use permit and is more like a homestay. I see the (inaudible due to technical disruption) if it is going to have to be a use permit for most everything and struggle with the fact that it may be...is there some way we can get this over the counter? I keep coming back to the situation that when we have the owner occupant in there it really makes a big difference. Whether or not that could be accomplished by the department in house as opposed to doing a use permit and I think that part of that was a minor homestay as opposed to that? I am not sure whether or not the bed and breakfast community I guess at that point, even though they technically do not have a use permit and can't consider themselves as being grandfathered even

though many of them do think so, that we are having to figure out how to deal with that in an effort to go ahead and deal with the ones that we believe are of more concern at that point.

Mr. Hull: I think for the vast majority of the people, at least that we have spoken to and many who spoke today, have said they are homestay operators and they have been operating for twenty years and never had a single complaint. Many of them we have on record, we don't have an actual complaint against the property which kind of goes to show that are they having an impact on the neighborhood? Probably not being that there have been no complaints issued to the Planning Department prior in the twenty years of operation. At the same time though, under the County Code, homestays do require a use permit and there is no way legally that the Planning Department can give a use permit, we just don't have the authority. The only authority that can give a use permit, say for residential or ag. lands, is this body. And any attempt by the Planning Department to take on the duty would be a circumvention of the Kauai County Code and we just don't have that power.

Mr. Abrams: Unless the Council changes.

Mr. Hull: Unless the Council changes which takes time. For the immediate future for a lot of these guys is that going to help, no because they have to turn away their clients and guests and quite frankly there is nothing we can do to immediately remedy it. We are taking applications right now and we are becoming very clear on those applicants who are the homeowners and that have been operating for several years without any complaints. Those applications stand a very good chance before this body, ultimately you guys are going to have the final say but because they have been operating for so long they have demonstrated to a certain degree, compatibility. I can't say who we are recommending approval for; we have to look at each one at a case by case situation. I know some have representation and those that have or haven't, we strongly encourage that if you haven't come into the Planning Department that you come in now to start to discuss the processing of the permits. That is really the only way Commissioner Abrams, for them to get legal.

Mr. Abrams: I suppose the Council will struggle with. I am trying to figure out if we should just address this bill here so we can get that out of the way and then your intention is to redraft a bill that comes down later or do you want us to discuss the issues that are here now.

Mr. Dahilig: I think for record safety, you see the departmental recommendation is that we pretty much strip all the elements of the bill except for these two items and then bundle it and put it into another bill for future discussion. I think that deserves it's time. Our simple action that we are asking today is to strip the majority of the bill, take all those items that have been striped put into a new bill, and that will be publicly noticed, and probably be before this Commission in about six weeks I would say. Then we can have that further discussion at that juncture on the elements that have been brought forward by the department. I do want to say that a lot of the elements that have been in the bill have not been done in a vacuum. We have done consultation with various individuals and agencies as well as those of the Kauai Tourism Authority. We think that we have a great compromise to balance the community impact with the need for some transient units. That is our desire, to have the Commission confirm that action

and if the bill, as stripped and approved and sent up to Council, is approved by the Commission we will follow up consequentially with that second bill.

Mr. Abrams: And that second bill will have to go to Council or is it a use permit domain, the Planning Commission's?

Mr. Hull: The second bill would have to go to Council as well but in the interim, at least under this, any applications via the use permit process would come to this body. You would be using that definition essentially to establish the standards for each. Like with the previous applicant, Shredco, you guys discussed at length the various parameters of that operation. Essentially, without specific standards as provided in the original proposal this body would have to have that discussion and review each case by case application for a homestay permit.

Mr. Abrams: I guess I am still stuck on the ten but I have to just get off of that and kind of move on with a couple other things. Some of the other things I am interested in talking about has to do with how many of these B&Bs or homestays are on ag. land and as to whether or not that should be something that would come up either now or down the road. But there certainly is a large group of them interested in doing that and I don't think we have really discussed that issue at all. We do have certain TVRs that are on ag. land that have gone back and have changed one hundred eighty degrees and at this point right now, for me, one of the questions I want to discuss would be, is this supervision sufficient enough? Because from a practical standpoint these are large lots that have all of the accommodations and can handle that type of thing if in fact now the State, Chapter 205, is allowing that type of situation where before we didn't think so.

Mr. Dahilig: I think the operative phrase when you talk about ag., ag. tourism activities, but another phrasing you have to keep in mind is also whether or not that includes overnight accommodations. That in and of its self is another legal question that I think moving forward, the attorney's office can provide you an opinion on where the interplay between agricultural tourism activities and overnight accommodations come into play and whether there is an actual nexus between those things or there is not. Mr. Chun raises certain points and we appreciate his advice and counsel but at the end of the day I think what we want to convey is we are aware of the 205 provision, we don't necessarily see in that light, and we can have the attorneys in executive session explain why we believe that it is applicable and may not be applicable in this particular case. If the concern is the number, again we by law cannot do a moratorium unless we are actually doing a study. What we are allowed to do is an interim. We are allowed under case law to do what is called an interim zoning measure as Kaaina has pointed out as long as there appears to be efforts by the decision making body and the legislative body to be actually working on a permitting policy. That is in affect why that number is there. Now whether it be ten or twenty, the idea is that that really acts as a limitation so that in case there is a cue up in the line and at the same time a new line is opened up, people can jump from that line to the express line, let's say it that way.

Mr. Abrams: There may be an outpouring of use permit applications coming in above and beyond what you guys are anticipating and are theoretically under compliance. I don't know whether or not they would be allowed to continue or does that need to be answered also in terms

of that? Whether they could continue doing what they are doing or do they need to cease and desist later on, you will need to think about all those things.

Mr. Dahilig: It is something that has been imposed to us by many people. I don't want to diminish that we are not blind to the human element in terms of this.

Mr. Abrams: I don't think you are. Like all of us, we are trying to figure out how to do this in a sensible way so that we don't have to revisit this all the time, thank you.

Chair Mahoney: Any further questions for the planner?

Mr. Dahilig: Mr. Chair that would be our recommendation at this time to approve the amended bill as such and forward to Council.

Chair Mahoney: Is there a motion on the floor?

Mr. Abrams: I am going to make a motion to approve Exhibit A of the ordinance, in its present form, and send to the Council.

Mr. Chun: If I may, I believe the Commission did not close the public hearing with the understanding that the public was going to be allowed to testify later on.

Mr. Dahilig: Mr. Chun is right, we needed to procedurally close the public hearing first and as stated when we opened up the public hearing, any member that signs up for testimony can elect to either testify at that time or can give notification that they wish to testify at the agenda item. That was announced at the meeting earlier this morning.

Mr. Abrams: I will wait for you to go through that process then.

Chair Mahoney: Is there anyone in the public who hasn't testified on this agenda item that would like to testify?

Matt Bernabe: I would just like to reiterate a question that was asked earlier, why and how has the county let it go on so long? I mean the wahine asked earlier and you know, rice was saved by letting Kipu, all the quad rides, how does that ag. activity...I am for making a legal B&B process that doesn't take ten a year, right, because that is third world. I don't understand what is going on, why can't we get more than ten processed? The lady earlier on the other issue with the fifteen acres in Kekaha, they want to shred couches and call that ag.? What is the difference between that business and a B&B? I don't own a B&B. I'm not impacted by it. I am only concerned about bad judgement and where this county is going. I want to see a lot of food made on Kauai but the reason I bring this is up is these guys that have ag. lots with B&Bs, under this mass appraisal evaluation that we use, it is unfair to them because their land for five or ten acres is in the millions. When Grove Farm has land that is in the millions but it is experiential in acreage, so the per acre is so much less than these guys acreage.

I am just baffled that you guys are squeezing these guys out that actually can generate money even if it is through tourism. Hey, squeeze the guys out that are adding on rooms, squeeze the guys out that aren't paying their share, squeeze the guys out that aren't compliant and are unwilling to come up there and get involved with the legalization of their business. But for heaven's sakes I think you guys are going after the wrong landowners because Grove Farm is converting all their ag. land into industrial for Jo Ann, commercial, housing, which we need some, I love the Safeway project, that is actually a traffic issue for Kapaa. But my point being is the rest of that land over there is not being use, they are not taking care of the water, they are not taking care of nothing and what I heard earlier with Kauai Springs is that the county is not only able but obligated. So I think you guys have to look at this as let's fast track the process so it doesn't take ten. Maybe you guys could, the first thing you do, see who is legal by your own standards, clip those hundred guys or hundred fifty of them that are not. Let's get some common sense into running this county, we are broke. I have been going to the county meetings, we are broke.

Chair Mahoney: Thank you for your testimony.

Patrick Mahone: Good afternoon council, thank you for allowing me to voice my opinion and feelings. It seems to me that the large majority this morning has testified both passionately and in some cases emotionally. It also seems to me that those testimonials have been largely in favor of finding a solution to provide a legal means in which to register and operate these businesses. With all due respect to the crafters of the bill, as it reads today it seems as though it is possible that some of the numbers by which the law seeks to limit the opportunity for additional business and existing businesses to operate could be construed as somewhat arbitrary. The density numbers perhaps as they are listed in the bill may have to be moved around based on the densities of the population as well as the volume of applicants. Perhaps the number of ten could be an overwhelming number for the Planning Commission and it may be just a handful for them to handle so it is perhaps wise to understand how those numbers were derived and the basis on which the numbers regarding the densities were derived as well and put some understanding behind those numbers and why they were chosen. Thank you for the time to speak.

Chair Mahoney: Thank you for your testimony, is there anyone else?

Joanne Allan: I want to speak to the area of land use being considered separate from land ownership. I want you to please consider if the new ordinance states that the person getting the license has to be the owner, the owner has to be the one residing on the property you are not thinking about if that owner gets sick or elderly or has to leave the property for some other reason. They need to be able to have a family member step in, a friend step in, someone run that B&B for them, someone who is going to reside on the property. You will still have your self-regulating person there but be able to have somebody there on the property other than the owner so that they don't lose their license, like I said, because of some kind of illness or some other unforeseen circumstance. I would like you to consider this when you are making your ordinance and you are making your definition of a homestay and B&B, thank you very much.

Chair Mahoney: Thank you for your testimony, is there anyone else that hasn't testified before?

Harvest Edmonds: I am really concerned if you pass this today and if more cease and desist letters go out, continue to go out, that there are going to be so many people that are going to be detrimentally impacted by this. A lot of them, I have a lot of friends that are farmers and they count on this income coming in from their homestays in order to keep farming because if they didn't have that they wouldn't be able to farm and many of them would have to sell their land. And we all know how expensive land is on Kauai, to buy land to be able to farm and make money to pay everything is just not feasible without having the homestays. I am really concerned that if more people get the cease and desist letters and have to stop it is going to really impact our island. I would hope that that could stop for now and it is probably going to take months to get this worked out if it has to go to the County Council in this form and then another bill brought in and go the County Council. This is months and months without these people having any income coming in for farming or whatever else they do.

Mr. Dahilig: Would the Commission let me address that particular question? The interesting thing as it concerns civil enforcement with this body is that our Planning Department acts like the Police Department and we also have to act as the Prosecutor's Office and this body is essentially the judiciary. We logistically have to support all three functions whereas when you look at how the judiciary is set up, judiciary is set up with a separate budget, prosecutors a separate agency with a separate budget, and the Police Department is a separate agency with a separate budget. As we all know we all cooperate on the due process of the law so anytime we issue a cease and desist order or notice and that can be appealed and has to run its course as required under constitutional law. At this juncture we have issued a number of cease and desist notices and to give some transparency and to give the Commission some of that, statistically what we are dealing with here, we have three hundred twenty parcels of concern and that is where you are hearing this three hundred twenty number come out. Of those, under one hundred have actually received zoning compliance notices and cease and desist notices. The vast majority of those are actually single family transient vacation rentals; sixteen are homestays at this juncture.

So like anything, along with the homestays and along with the single family transient vacation rentals, both require due process and at this juncture we have to be able to provide the due process of the law in an efficient and timely manner. Our ability to do so, given that this is a volunteer body as well as my staff, we can only do so much. We are focusing on what we have issued so far, we are not going to stop investigations and in particular our focus is going to be shifting to those TVRs that we have shut down that are now trying to put on sheep's clothing and turn into a bed and breakfast. That, I think, from an enforcement and efficiency standpoint is where we are going to be focusing our enforcement attention at this point. But at this juncture just to answer the woman's question we are being a little more selective at this point in how we use our resources because of the need to make sure that we provide due process of the law in a timely manner. It is just like the Police Department can't issue fifty thousand tickets and then try to run all of them through judiciary, at one point you are going to end up with a clog and we have to try and ensure we juggle the workload and make sure we are balancing it out and it is not an unmanageable matter.

Mr. Hull: I might also add to the Director's comments and some of the discussion that has gone on throughout the day. The department is very sympathetic to the misunderstandings and lack of clarification that has been going on. But to be clear there is a process today for homestay owners to be made compliant. It is not with the ordinance that you guys are looking at, it wasn't with the previous ordinance, indeed both of them lay out more specific standards for the processing of permits but there is, make no mistake, a process in place today for a homestay operator to come in and be made whole. But the fact of the matter is they have to come and they have to apply for a use permit and as much as we are sympathetic to the fact that the approval needs to be done in an extremely expedient manner to take care of clients that have to be turned away, the department can't process them. Ultimately this body is the reviewing body for use permits but there is, again, a process in place today, they just need to come in.

Mr. Dahilig: Mr. Chair, I think the actions that need to be taken should the Commission be inclined to support the department's recommendation is to first close the public hearing and then move on to the second motion concerning action on the item.

Chair Mahoney: Is there a motion on the floor?

Ms. Mendonca: So moved.

Mr. Abrams: Second.

Chair Mahoney: It's been moved and seconded to close the public hearing.

Mr. Chun: Mr. Chair, with all due respect there are members of the public that want to make further comment. The rules don't prohibit them from doing it after the last person has spoken.

Chair Mahoney: At the Chair's discretion. At this time if any members of the public want to give further testimony you will be allowed but keep it relevant and let's not rehash what was discussed in depth this morning, we have that testimony on record. If there is something new to add and please keep it to three minutes, we will allow that.

Mr. Cowern: I am a little confused about some of what I heard. Under 205.05 listing permissible uses within the agricultural district, 205 4.5, number eleven reads "Agricultural Tourism conducted on a working farm or farm operation as defined in section...for the enjoyment and education of visitors provided it is accessory and secondary to the principal agricultural use." Item twelve states "Agricultural Tourism activities including overnight accommodations of twenty one days or less for any one stay within the county provided that this paragraph shall apply only to a county that includes at least three islands." That to me is fairly clear. One more thing and I realize that many of the people that are sitting here today were not involved with the Planning Department or the Commission when a lot of this took place. My wife and I came in twice looking for a method to become legal. We came in with the TVR issue and asked what can we do, we are bed and breakfast, what do we do? They said you don't need anything, you are fine. What we were told is, quote, "we are not looking at you, we know you

are there, we know you have been there for years you don't have a problem." We can in the second time about three years later and we got exactly the same statement. The next thing we heard was a cease and desist letter. We never heard anything that said there is a process for you to get legal, ever, we just got a cease and desist letter. So there is a reason for some of the frustration.

Chair Mahoney: Thank you for your testimony.

Ms. Hoff: I actually just had a question. I agree with you about the TVRs and people that don't live here and don't raise their family here and they guy a home and they guy five homes and then they are gone and they rent them out. What I am wondering is, I along with Bill Cower here, have never heard about a process because I lived in the home I could actually get permitted. I did ask and they said no, if you live in the home it is okay. What I can't understand is how did these TVRs like you say, wolves in sheep's clothing, how were they able to get in a loop hole when I didn't even know there was anything existing that had a loop hole.

Chair Mahoney: Would anyone else like to testify?

Mr. Bernabe: I just wanted to ask, you left me hanging, what department and can I go in just to educate myself, go and read your process for homestead? And what exactly is the definition of homestead to somebody who is ignorant and just trying to follow you guys? What do you consider homestead in this case?

Mr. Dahilig: Homestead or homestay?

Mr. Bernabe: Homestay I guess.

Mr. Dahilig: It is a definition that is in section 8-1.5 of the Kauai County Code.

Mr. Bernabe: Are you going to provide me with that or do I have to google it?

Mr. Dahilig: We can do that.

Ms. Chong: My main concern with Exhibit A is the limiting number of the ten applications to be reviewed on an annual process, keeping mind that the total maybe slated three hundred twenty letters to be sent out eventually. When you look at ten per year you are looking at a waiting period of thirty two years which would basically put most of us out of business. In line with the workload I would think that of course you know how many you would potentially send out maybe you could come up with sending ten cease and desist letters because you can handle ten at a time whereas other people are not being affected or impacted negatively. And it seems like the ones that are trying to conduct businesses to the best ability they can and within the law are getting caught up with those that are trying to take advantage of the loop hole. Thank you.

Ms. Boilini: I'm Margerie's Kauai Inn. I just have a question, when we got these cease and desist letters why couldn't they have said, because this was all coming up now," we believe

you are possibly in violation of such and such, you have a certain amount of time to come and see us to comply and get a process going.” That would have at least given us a remedy. Being blindsided like this and having to suddenly call hundreds of tourists and tell them sorry you have to go to Maui. In Maui when this happened I remember Maui was given a certain amount of time to comply they didn’t just shut them down so that is where I think our real frustration is, we are out of business at this point. These are hundreds and hundreds of tourists that want to come here and they do only go to this kind of a place, a bed and breakfast, they are expecting that morning breakfast and to mingle with the other guests and we can’t provide that now. I can’t even send them to another one because they are closed down so I have to send them to another island. It doesn’t make sense to me. I just need a little more explanation. I am a citizen and I respect what you guys are doing, I am listening to everything you are saying and trying to give you the benefit of the doubt but it almost like coming into a neighborhood and saying there was a robbery, we know it was someone in this neighborhood, you are all arrested, you are all put in jail with bologna sandwiches until we take each one of you and prove you innocent. We are guilty until we are proven and it just doesn’t seem right. It is just not right. Thank you.

Mr. Hoff: I see your problem with bureaucracy with having to deal with all the different agencies. The State of Hawaii, and correct me if I am wrong, has four categories of land classification, they are urban, rural, ag. and conservation. Open is in conservation. Okay, I am wrong. Residential is a legitimate classification, there is a legitimate definition for it and I don’t have it here but it says small farms, it mentions small farms. Why can’t you put us, the people in ag. into a rural classification? The other question I have, I don’t want to sound rude but since we have been connected with criminals how about the statute of limitations. If we have been working along for, Lorna and I, ten years, the statute of limitations is five. In 2004 or 2005 we passed the statute of limitations, they can’t come after us as I understand it. Is there a response from the Commission?

Mr. Dahilig: I will just say this; our department has no criminal enforcement authority.

Mr. Hoff: Some of us figure this is criminal.

Mr. Dahilig: Our department does not have any criminal enforcement authority. We are a civil enforcement authority.

Mr. Hoff: I will talk to my attorney.

Chair Mahoney: Thank you Mr. Hoff, Mr. Chun.

Mr. Chun: I am going to say a few things and it is going to be very difficult for me to say. First of all I understand and I respect Mr. Dahilig and Mr. Hull, they have been doing a yeoman’s job, especially Mr. Hull since he just jumped in. I know what they are up against, I have been there at one point in time in my life and I have a lot of respect for them. But I have to say this because on the other hand I think there is a lot of frustration here. Let me try to articulate if I can, there is a lot of frustration because this is the second time people like the clients behind me have gone through this. The Council told them ten years ago don’t worry we will take care of it and now today it is the same thing, we have two ordinances, pass this and we

will take care of it a second time. This is the second time they have been told I will take care of it and nothing happens and this is where they are at right now. Here, it is too burdensome because we have so many applications out there but let's take a step back and find out why that is happening.

The first reason why it is happening is you are sending out a whole bunch of letters saying cease and desist you are illegal. That is what started it and that is an unprecedented activity by the county, the county has never ever done that before in its entire history, to send out all these letters to people with no complaints and just send them all at one time. And then telling them to cease and desist, and then telling them if they really want to make themselves legal they have to come in with an application. They responded, they ceased and desisted, they came in for an application and the now the county is telling them sorry, it is too much for me to handle. You have to wait ten years, fifteen years, thirty years and maybe we will get to you. And the only response right now is don't worry we will get to it later on. You can imagine the frustration in the public about that and you are going to be involved in that and that is why I bring it up because that is a decision you are going to have to make. Is that a decision that the Commission wants to make, that we are telling people to shut down and we are telling people to apply and when they apply and do exactly what the county has told them to you are telling them oh well, wait thirty years and maybe we will get to you.

The last thing, inconsistencies in statements and in all due respect to the department but this is what I have heard today, this afternoon, so far. One is yes; we understand there are a lot of people in the ag. district that have been operating for twenty, thirty, maybe ten years and no complaints, we haven't received any and we are going to take a look at that. And yet in the same thing we hear statements from the department saying we stand by our original draft which says no bed and breakfast homestays on ag. land. And yet you are telling them trust me, we will take care of it later on. That is why there is a lot of frustration. That is why there is frustration with government, that is why there is inconsistency and people don't understand. So I am asking for the Commission to clear up the understanding, do your best job the first time, not the second time and not the third time. Do the best thing you can do the first time around, thank you.

Mr. Dahilig: Mr. Chair, given the testimony our recommendation is still to close the public hearing at this time.

Chair Mahoney: Is there a motion on the floor?

Ms. Mendonca: So moved.

Mr. Abrams: Second.

Chair Mahoney: It has been moved and seconded to close the public hearing, any discussion, hearing none all those in favor say aye, no, public hearing is now closed.

On motion made by Commissioner Mendonca to close the public hearing, seconded by Commissioner Abrams, motion carried unanimously by voice vote.

Mr. Dahilig: Mr. Chair, consistent with our discussion the department's recommendation is to move forward with our recommendation that the Commission approve Exhibit A outlined in the Director's Report and forward that draft bill up to the Council for its entertainment.

Mr. Abrams: Move to approve Exhibit A and send to Council.

Mr. Keawe: Second.

Chair Mahoney: It's been moved and seconded, any discussion?

Mr. Abrams: Yes. It is almost damned if we do and damned if we don't but we really do need to deal with the most important one out there and it has to go to the Council, we have to get this to them as soon as possible to deal with the situation with a definition. I don't necessarily agree with the ten and I realize the complications that it creates for the department and everything else. At that point I am not sure whether or not there will be a discussion at the Council level in regards to dealing with that particular issue. It is something that we are faced with and whether or not they deal with the issues we are talking about right now, if Council decides they want to come back and provide some sort of a relief while we sort all these other issues out then so be it. But not doing anything at this point right now is really going to be even more problematic with what we have to do in the future. So that is why I am supporting this motion to approve this and send it up to the Council.

Ms. Mendonca: I have to agree with Commissioner Abrams. The fact that the homestay requires owner occupancy, I think it would help those who were already on ag. land and who have owned the property. And hopefully when the second draft comes back to us we can be clearer in certain things that may relate these concerns. I also agree with him on the number of ten, it does put some kind of restrictions but then in the same token if you are already in the business and have taken a cease and desist then you should get back on track immediately and put in your application following the fact that if you are already an owner occupant. That should eliminate some of your immediate concerns for the public that have taken the time to come here and express your concerns because that will put their application in motion.

Mr. Keawe: I am also concerned with ten. I am new to this process, I think looking at the process and then having you all turn out, we appreciate what you have done as far as letting us know your feelings on the issue. We are trying to move the process along; I think if we keep deferring it like Commissioner Abrams said we are just making it worse. We need to make a decision and move on and then see from that point what can be done to get that work moved through quickly. Obviously, I don't particularly agree with ten, I don't know what the situation is with regard to why that is what it is but we need to address it in a fashion that I think will be acceptable to all those that are applying, that are operating and have not had any issues over the last several years.

Chair Mahoney: I would just like to add the testimony from the public was very compelling and gave the Commission first hand from people who are most affected by it. I think we are in a situation where we all in a dilemma and doing nothing is not going to help the matter, the number ten that was brought up, I have reservations about that number also. But I think our

best alternative in this situation is to move it to the Council. So I concur with my fellow Commissioners and I do want the members of the public to know that your testimony was not taken lightly, it was a very effective means of trying to make a solution out of this problem. But there are so many facets to it we have to make a move and sending it to the Council at this juncture would be our best move. A motion is on the floor.

Mr. Abrams: I really would like to thank the department, you really are under...you need a use permit, use permit rules have been enforced since 1972 for dealing with this, notwithstanding all of the beliefs in regards to that, they tasked with trying to enforce at the same time and be fair and it is very difficult. I hope that we can resolve this cease and desist and try and get through it but it going to really depend on the guidance because this is a policy matter that the Council has to go ahead and decide on what they want to do so they can instruct us and we can go about implementing whatever they decide. We can provide more input which we will be doing in regards to all of the other issues that are in there in terms of ag. and everything else. I want to get that done as soon as possible, I think it is big enough and a priority that we will be asking our department to go ahead and make that a priority and think they get it. There are so many different applications coming up that all center around homestays or TVRs or contested case hearings that are going to be spending a great deal of time discussing this issue and the sooner the better. I know some people will not like making this motion and sending it up but I am doing that mainly because of the fact that we really have to get through this. And I don't like the fact that our department is left having to do this. A lot of these are new people in here who are trying to deal with this issue that believe me has been going on for a long time, right Karen? Hopefully we getting to the end of the tunnel of being really clear and I really would like to see that happen. I will call for the question.

Chair Mahoney: It has been moved and seconded, all in favor, opposed, motion carried.

On motion made by Commissioner Mendonca to approve Exhibit A and forward to the County Council, seconded by Commissioner Abrams, motion carried unanimously by voice vote.

New Public Hearing

Zoning Amendment ZA-2015-5: Proposed Bill No. 2459 for an ordinance to amend Article 8, Section 8-8.6 of the Kaua'i County Code (1987), as amended, to allow Farm Worker Housing Permits to be issued to farmers whose condominium property regime (CPR) declarations have been amended after August 16, 2010 = County of Kaua'i, County Council.

Mr. Dahilig: Thank you Commissioners. We are now on Item G.4, which is new public hearing. This is Zoning Amendment ZA-2015-5. A Proposed Bill No. 2459 for an ordinance to amend Article 8, Section 8-8.6 of the Kaua'i County Code, as amended, to allow Farm Worker Housing Permits to be issued to farmers whose condominium property regime declarations have been amended after August 16, 2010.

Chair Mahoney: Could we have some order please.

Mr. Dahilig: Mr. Chair, Kaaina is, again, handling this matter and he'll be able to digest this for you.

Mr. Hull: Good Afternoon again, Chair, members of the Commission. The Zoning Amendment before you folks today is to amend the farm worker housing ordinance. Ultimately, back in 2010...

Chair Mahoney: Could we have some order please.

Mr. Hull: Back in 2010, the County Council adopted a farm worker housing ordinance, which essentially allows farm worker housing units to be constructed on agricultural lands for the specific purposes of housing farmers working on established farm operations. Measures were put in place to ensure that no abuse of farm worker housing was done essentially for, say transient or just residential purposes, but indeed to provide housing for farmers.

There are many standards with some of the main focuses were demonstrating that the farm has generated \$35,000 of gross sales per year for the two (2) consecutive years prior to the proposal being made; as well as, the land being on agricultural dedicated land pursuant to real property standards and rules; and having an actual farm plan. And ultimately coming before this body to be reviewed and have action taken upon.

When the ordinance was passed, there were a lot of concerns about potentially...on CPR lands that potentially applicants that secured farm worker housing could CPR around the particular farm worker housing unit and attempt to sell it off for non-farming purposes, or non-agricultural purposes. So a certain measure was put in place that you could only apply for farm worker housing units on CPRs that had not been amended after 2010, or since the adoption of the ordinance. In practice though, what...and the Department didn't really have an issue with it; we didn't present it, we didn't speak in favor it, we didn't speak against it, it was essentially initiated at the Council.

What's happening now that the farm worker housing ordinance is in play, is that we've come to the realization that when you put a farm worker housing unit on a CPR, or a condominium property regime, that requires that the CPR itself be amended to reflect the farm worker housing. So it essentially pushes out any possibility of anybody there after applying for farm worker housing, despite the fact that they have their land in agriculture dedication or making a significant revenue from agriculture activities. The proposed amendment is just to remove that CPR amendment language, so the Department does support the proposal and is recommending approval to this body.

Chair Mahoney: Okay. Is there any questions from the Commission to the Planner?

Mr. Abrams: I see the...you know, that part was there, and so this farm worker housing has to be sort of on post and pier. Does it have to be sort of a temporary type of housing?

Mr. Hull: Yes, it has to be post and pier; that was something, as well imposed by Council to make it a little bit easier to, I guess, disassemble.

Mr. Abrams: Yeah, okay. So we'd have to have an ag condominium, I guess, at that point to amend their declaration to allow farm worker housing. Is it actually considered another dwelling?

Mr. Hull: It functions as a dwelling, but the way that the ordinance was passed is it can only be applied for if you haven't...if you've already used up all your existing density. Because at the end of the day when...what's allowed on agricultural lands are farm dwellings and the purpose of them was to house farmers. Ultimately, the policy call is made to allow additional units to be utilized for farm worker housing as well.

Mr. Abrams: Alright, thanks.

Mr. Keawe: I had one, real quick question. Is there a big demand for this?

Mr. Hull: There is some demand for the...Commission has reviewed, over the course of the past four (4) years, two (2) applications I believe. There is one (1) queued up that you will be receiving shortly here, and I know of two (2) others that are applying. There is demand for it definitely, but to meet the standards that have been set, which are primarily ag dedication and the demonstration of \$35,000 of gross sales per year for two (2) years consecutively, that is essentially...and those are the parameters (inaudible) to say you are a legitimate farm and are in need of these farm workers. So I think there's demand for it, but those that can come in and apply under the standards is...we're looking at probably three (3) or four (4) a year at most.

Chair Mahoney: Thank you. Any further questions? (None)

Mr. Dahilig: So I guess just to reiterate Mr. Chair, our recommendation is the Commission approves the amendments as forwarded from the Council, and send it back to Council.

Chair Mahoney: Chair will entertain a motion.

Mr. Keawe: I'll move that the Commission approve the amendments, send to the Council, approve it and send it back.

Mr. Abrams: Second.

Chair Mahoney: We have a second. Is there any discussion on this agenda item? Hearing none. All in favor? (Unanimous voice vote) Opposed? (None) Motion carries.

On the motion made by Commissioner Keawe and seconded by Commissioner Abrams to approve the amendments and send it to Council, the motion carried by unanimous voice vote.

ANNOUNCEMENTS

Topics for Future Meetings

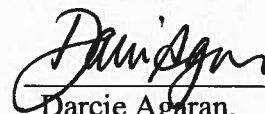
The following scheduled Planning Commission meeting will be held at 9:00 a.m., or shortly thereafter at the Lihue Civic Center, Moikeha Building, Meeting Room 2A-2B, 4444 Rice Street, Lihue, Kauai, Hawaii 96766 on Tuesday, May 12, 2015.

Mr. Dahilig: Thank you, Mr. Chair. We're on Item O. We did distribute the future meetings, I guess, batting order for everybody to take a look at, and the next scheduled meeting will be in this room at 9 a.m. on Tuesday, May 12, 2015. There is no second meeting in April; the next meeting will be the second Tuesday in May.

ADJOURNMENT

Vice Chair Mahoney adjourned the meeting at 2:54 p.m.

Respectfully submitted by:



Darcie Agaran,
Commission Support Clerk

() Approved as circulated (add date of meeting approval)

() Approved as amended. See minutes of _____ meeting.